

**SPECIAL MEETING OF THE ADMINISTRATIVE COMMITTEE
OF THE BOARD OF DIRECTORS
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
4040 PARAMOUNT BOULEVARD, LAKEWOOD, CALIFORNIA 90712
12:30 P.M., THURSDAY, MARCH 25, 2010**

AGENDA

Each item on the agenda, no matter how described, shall be deemed to include any appropriate motion, whether to adopt a minute motion, resolution, payment of any bill, approval of any matter or action, or any other action. Items listed as "For information" may also be the subject of an "action" taken by the Board or a Committee at the same meeting.

- 1. DETERMINATION OF QUORUM**
- 2. PUBLIC COMMENT**
- 3. MINUTES OF THE MEETING OF DECEMBER 8, 2009**
Staff Recommendation: Approve as submitted.
- 4. PROCUREMENT POLICIES AND PROCEDURES**
Staff Recommendation: For discussion.
- 5. CEQA POLICY**
Staff Recommendation: For discussion.
- 6. ETHICS COMPLIANCE**
Staff Recommendation: For discussion.
- 7. DEPARTMENT REPORT**
Staff Recommendation: For information.
- 8. DIRECTOR'S REPORTS, INQUIRIES AND REVIEW OF DIRECTIONS TO STAFF**
- 9. ADJOURNMENT**

Posted by Abigail C. Andom, Deputy Secretary, March 23, 2010.

In compliance with the Americans with Disabilities Act (ADA), if special assistance is needed to participate in the Board meeting, please contact Deputy Secretary Abigail Andom at (562) 921-5521 for assistance to enable the District to make reasonable accommodations.

All public records relating to an agenda item on this agenda are available for public inspection at the time the record is distributed to all, or a majority of all, members of the Board. Such records shall be available at the District office located at 4040 Paramount Boulevard, Lakewood, California 90712.

Agendas and minutes are available at the District's website, www.wrd.org.

UNAPPROVED
MINUTES

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**MINUTES OF DECEMBER 8, 2009
SPECIAL MEETING OF THE ADMINISTRATIVE COMMITTEE
OF THE BOARD OF DIRECTORS
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA**

A special meeting of the Administrative Committee of the Board of Directors of the Water Replenishment District of Southern California was held on December 8, 2009 at 2:50 p.m. at the District Office, 4040 Paramount Boulevard, Lakewood, California. Chairperson Lillian Kawasaki called the meeting to order and presided thereover. Deputy Secretary Abigail C. Andom recorded the minutes.

1. DETERMINATION OF QUORUM

Attendees included:

Committee: Directors Lillian Kawasaki and Rob Katherman

Staff: Scott Ota, Jenna Shaunessy,
District Counsel Jamie Casso

2. PUBLIC COMMENT

None.

3. APPROVAL OF THE MINUTES OF OCTOBER 19, 2009

The Committee approved the minutes as submitted.

4. VEHICLE ALLOWANCE

Discussion followed and the Committee requested the item be continued to next month's meeting.

5. CEQA POLICY

Discussion followed and Director Kawasaki stated that she would like to meet with Special Counsel Deborah Fox regarding the possibility of a California Environmental Quality Act (CEQA) policy for applicable District projects. Director Kawasaki stated that she will report back to the Committee the results of her meeting.

The agenda items were taken out of order.

7. DECENNIAL ADJUSTMENT OF DIVISION BOUNDARIES

The Committee requested the item be continued to the June 2010 Administrative Committee meeting.

6. **PROCUREMENT POLICIES AND PROCEDURES**
District Counsel Jamie Casso presented the proposed revisions to the WRD Procurement Policies and Procedures. Discussion followed and the Committee requested the item be continued to next month's meeting.

8. **DEPARTMENT REPORT**
None.

9. **DIRECTOR'S REPORTS, INQUIRIES AND REVIEW OF DIRECTIONS TO STAFF**
The next Administrative Committee Meeting was scheduled for Wednesday, January 20, 2010 at 10:30 a.m.

10. **ADJOURNMENT**
With no other business to come before the Committee, the meeting was adjourned at 4:15 p.m.

Chairperson

ATTEST:

Director



MEMORANDUM

ITEM NO. 4

Prepared by: Abbie Andom

Reviewed by: Scott M Ota

Approved by: Robb Whitaker

DATE: MARCH 22, 2010

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: PROCUREMENT POLICIES AND PROCEDURES

SUMMARY

The Committee Chair requested a review of the District's Procurement Policies and Procedures to ensure that they are compliant with best public agency practices and applicable statutory restrictions. The Committee has been reviewing suggested revisions to the policies and procedures at its September 3, October 19, and December 8, 2009 meetings. At the direction of the Committee, District Counsel further revised WRD's Procurement Policies and incorporated portions of MWD's procurement policies. Copies of the proposed Procurement Policies and Procedures will be provided at the meeting.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

For discussion.

10 PROCUREMENT POLICIES AND PROCEDURES

10.1 CONSTRUCTION CONTRACTS

10.1.1 GENERAL PROVISIONS

(a) Definitions

Board. The Board of Directors of the Water Replenishment District of Southern California.

Construction Contract. The term Construction Contract means a written agreement between the District and any Person pursuant to which such person in exchange for payment by the District performs any of the following activities by itself or through others: the construction, alteration, addition to, or repair, in whole or in part, of any building, structure, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, road, or the seeding, sodding, or planting of any lot or tract of land for landscaping purposes, the filling, leveling, excavation, or grading of any lot or tract of land, the demolition of buildings, and the removal of buildings.

Contract Solicitation. The term Contract Solicitation shall include any and all means by which the Water Replenishment District of Southern California seeks proposals, bids or prices, including without limitation requests for proposals and invitations to bid, for the purpose of entering into a contract totaling twenty-five thousand dollars (\$25,000.00) or more.

Director. A member of the Board of Directors of the Water Replenishment District of Southern California

District. The Water Replenishment District of Southern California.

General Counsel. The General Counsel of the Water Replenishment District of Southern California.

General Manager. The General Manager of the Water Replenishment District of Southern California.

Person. Person refers to any natural person, corporation of any kind, partnership of any kind, business entity of any kind, organization, association, or governmental entity.

President. The President of the Board of Directors of the Water Replenishment District of Southern California.

Secretary. The Secretary of the Board of Directors of the Water Replenishment District of Southern California.

(b) Intent – These Procurement Policies and Procedures shall govern all construction contract procurements by the District and shall be incorporated by reference into all Contract Solicitations issued by the District and 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 to District personnel and all other Persons in the carrying out of any contract procurements by the District

(c) All Contracts Shall be in Writing – All expenditures for construction work, materials, equipment, and supplies regardless of price shall be made pursuant to a contract. All District contracts shall be in writing in a form prescribed by the General Manager and approved by the General Counsel. At minimum, each contract shall include the relevant scope of work, duration, and terms of payment.

Authority: Water Code § 60230.5.

(d) Board Approval of Contracts; Signing of Contracts

(i) \$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)

(ii) 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 person or 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)

(e) 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 Person seeking a contract with the District.

Authority: Government Code § 87100.

- (f) Claims Against the District – All claims against the District are subject to the Claims Presentation procedures of the District’s Administrative Code, these Procurement Policies and Procedures, and the provisions of California Government Code sections 900, et seq. Alternatively, claims may be submitted by mutual agreement to mediation or binding arbitration.

10.1.2 Competitive Bidding

- (a) Before advertising for any bid, District staff shall obtain Board approval of the Contract Solicitation.
- (b) Less than \$25,000 – Where the amount or value involved is less than twenty-five thousand dollars (\$25,000.00), an informal 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. Every attempt shall be made to receive at least three price quotations.
- (c) \$25,000 or more – Before making any contract totaling \$25,000.00 or more within any 12 month period, the District shall advertise for bids by issuing a Contract Solicitation.
- (d) The District shall advertise the Contract Solicitation in a newspaper of general circulation in Los Angeles County at least once a week for four consecutive weeks.
 - (i) The District may advertise Contract Solicitations in a publication of the respective professional society or other publication reasonably calculated to reach its intended audience. The 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) The 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;
- (ii) That the Board will receive sealed bids for the contract;
- (iii) That the contract will be awarded to the lowest responsive and responsible bidder; and
- (iv) That bids will be publicly opened at a given time and place.
- (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 Contract Solicitation.

(f) No Contract Solicitation shall be prepared in a manner that limits participation to a single concern, entity or person 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.

In issuing any Contract Solicitation or awarding any contract, the District shall not discriminate against any contractor or consultant on the basis of race, color, religion, sex, marital status or national origin.

After issuance of a Contract Solicitation, the District shall not change any material provision in the Contract Solicitation except by issuance of a formal written addendum to the Contract Solicitation.

- (g) All bids for construction work 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.

(h) 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.

- (i) Following the public opening of bids, the Board may do any of the following:
 - (i) Let the work to the lowest responsible bidder;
 - (ii) Reject any or all bids and re-advertise for proposals; or
 - (iii) Proceed to construct the work under its own superintendence.

Authority: Water Code §§ 60602, 60606, 60608, 60612; Public Contract Code § 1103

- (j) Upon an award of a Construction Contract to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the District beyond 60 days from the time the award is made.
- (k) 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.
- (l) 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 Civil Code Sections 3247 and 3248. Failure to comply with the requirements of this Section within ten (10) 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 a contract for the project as provided herein.
- (m) 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 3248, is issued by an admitted surety insurer, and complies with any additional requirements set forth in the 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 (i) verifying that the payment bond is in the form previously approved by the General Manager and the General Counsel, (ii) 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 (iii) ensuring that the payment bond is in the proper amount and complies with any additional requirements set forth in the Contract Solicitation.

- (ii) Performance bonds 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 § 60610, 60620; Business & Professions Code §§ 7000, *et seq.*; Civil Code §§ 3247, 3248

- (n) Bidders shall furnish to the District satisfactory proof of all insurance required by law, the Contract Solicitation, and any other contract. 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) 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 a contract for the project as provided herein.

10.1.3 Exceptions

Except as otherwise provided in these Procurement Policies and Procedures, the advertising requirements of Sections 10.1.2 do not apply to any of the following contracts:

- (a) Contracts with public entities and cooperative funding agreements undertaken to perform the purposes and activities of the District.
- (b) 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.
- (c) 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.

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

10.1.4 Splitting Orders Prohibited

It is unlawful to split or separate into smaller orders the purchase of supplies, materials, equipment or services for the purpose of evading the competitive bidding provisions of this Chapter.

10.1.5 Bidder Responsibility and Prequalification

(a) Bidder Responsibility

A “responsible” bidder means a bidder 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. The District shall determine whether the bidder is “responsible” by considering the following:

- (i) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (ii) The ability of the bidder 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 bidder;
- (iv) The prior and current compliance by the bidder with applicable law;
- (v) The sufficiency of the bidder’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 bidder 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 a bidder is “responsible.” Such questions may concern, without limitation, the bidder’s prior experience on projects of a similar nature and size, the bidder’s technical capabilities, the bidder’s financial capability, and the bidder’s references.

(b) Pre-qualification

Should the District determine that the scope, technical complexity, or other unusual features of a proposed project warrant the prequalification of bidders, or that it would be in the District's best interests to pre-qualify bidders 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. Any such pre-qualification procedures shall be first approved by the General Manager and the General Counsel.

Authority: Public Contract Code §§ 1103, 20101.10.1.7

10.1.6 Withdrawal of Bids

Bids may be withdrawn by bidders at any time before the deadline for submission of bids set forth in the applicable 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 Contract Solicitation and these Procurement Policies and Procedures.

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:

- (a) A mistake was made;
- (b) The bidder gave the public entity written notice within five calendar days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred;
- (c) The mistake made the bid materially different from what the bidder intended it to be; and
- (d) 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.

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.

10.1.7 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.

10.1.8 Forfeiture of Bid Security

If the bidder who has been determined by the District to be the lowest responsive and responsible bidder 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.

10.1.9 Bidder Protest of Award

A bidder 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. The protest must be received by the District before the Board action to approve the award of the contract in question; the Board will not consider the award of any contract where the bid opening has taken place 72 hours or less prior to the Board meeting. The General Manager in consultation with the General Counsel shall investigate the grounds for the protest, examine the documentation, make inquiries as necessary, and accept or reject the protest in writing within five

working days of receipt. If the protest is accepted, the District may at its discretion reject the bid or proposal in question and thereafter award the contract in accordance with these Procurement Policies and Procedures or else reject all bids or proposals.

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 the second 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.

Bid protests that do not comply with the deadlines and filing requirements set forth above shall not be considered. The award of any contract by the District shall be contingent on the final resolution of any protests thereof.

10.1.10 Required Forms

Contract Solicitations shall be accomplished using a form approved by the General Manager and the General Counsel.

10.1.11 Small Business Enterprise Outreach Program

It is the District's policy to encourage and promote broad-based participation in its contracting activities by all potential participants so as to maximize competition for District Contracts, to attract the greatest number of qualified bidders and to stimulate participation by responsible bidders who might otherwise be prevented from participating in the District's procurement activities.

- (a) Small Business Enterprise (SBE) Outreach Program. The District's program is adopted pursuant to Public Contract Code Section 2002. For purposes of this section, a Small Business Enterprise (SBE) shall mean a small business enterprise certified as such by any branch of the Federal Government, the State of California, or by any other Public Entity within the State of California as defined by California Public Contract Code Section 1100.
- (b) SBE Subcontractor Participation Goal. Notwithstanding the requirement that the District award a contract to the lowest responsive and responsible bidder, all bidders for contracts greater than \$100,000.00 must subcontract not less than 20% of their bid amount to SBEs or demonstrate that they made good faith efforts to do so. The District will reject as non-responsive bids by Bidders who fail to either meet the SBE Subcontractor Participation Goal or to demonstrate that they made a good faith effort to meet the SBE Subcontractor Participation Goal.
 - (i) The term "subcontractor" for purposes of the SBE Subcontractor Participation Goal shall have the meaning set forth at Public

Contract Code Section 4113 but shall also include suppliers and material men.

- (ii) The term "Good Faith Efforts" shall refer to objective criteria formulated and applied uniformly and incorporated in applicable District Contract Solicitations by District staff in consultation with District counsel which shall include:
 - (1) evidence that the bidder has identified portions of the work that may be subcontracted to SBEs;
 - (2) evidence that the bidder has contacted SBE certifying agencies to identify potential SBE subcontractors for the portions of the work to be subcontracted;
 - (3) evidence that the bidder has sent written invitations to bid to SBE subcontractors so identified or to other SBE subcontractors eligible for the work to be subcontracted; and
 - (4) evidence that the bidder has attempted on at least two occasions to follow up its written invitations to bid and the results of those attempts.
- (c) To qualify for the SBE Subcontractor Participation Goal, SBEs must be certified as such at the time a bid is submitted to the District. Proof of certification must be submitted to the District not later than two business days after the deadline for submitting bids. Proof shall include a copy of each SBE's certification or other appropriate documentary evidence by the certifying public entity. Proof of certification shall be subject to verification by the District.
- (d) Before advertising for bids, the Board may modify the subcontractor participation requirement created by this section for particular procurements, or exempt particular procurements from the subcontractor participation requirement, if the Board determines that it would be in the District's best interest to do so based on the nature of the services, equipment or materials to be procured or other relevant factors.

Authority: Pub. Cont. Code § 200210.1.13

10.1.12 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.

10.1.13 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.

10.1.14 Sole Source Contracts

The District is authorized to suspend the competitive bidding process and enter into a sole source agreement with a particular service provider or contractor only 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 proposals work an incongruity and are unavailing, or that competitive proposals do not produce any advantage. The Board must also approve the sole source contract.

10.2 CONTRACTS FOR THE PURCHASE OF MATERIALS, SUPPLIES AND EQUIPMENT

10.2.1 GENERAL PROVISIONS

(a) **Definitions**

Board. The Board of Directors of the Water Replenishment District of Southern California.

Contract for Purchase of Materials. An agreement between the District and any Person for the purchase of supplies, materials, equipment or other tangible goods of any kind.

Contract Solicitation. The term Contract Solicitation shall include any and all means by which the Water Replenishment District of Southern California seeks proposals, bids or prices, including without limitation requests for proposals and invitations to bid, for the purpose of entering into a contract totaling twenty-five thousand dollars (\$25,000.00) or more.

Director. A member of the Board of Directors of the Water Replenishment District of Southern California

District. The Water Replenishment District of Southern California.

General Counsel. The General Counsel of the Water Replenishment District of Southern California.

General Manager. The General Manager of the Water Replenishment District of Southern California.

Person. Person refers to any natural person, corporation of any kind, partnership of any kind, business entity of any kind, organization, association, or governmental entity.

President. The President of the Board of Directors of the Water Replenishment District of Southern California.

Secretary. The Secretary of the Board of Directors of the Water Replenishment District of Southern California.

- (b) Intent – These Procurement Policies and Procedures shall govern all contracts for the purchase of materials, supplies and equipment by the District and shall be incorporated by reference into all Contract Solicitations issued by the District and 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 to District personnel and all other Persons in the carrying out of any contract procurements by the District.

- (c) All Contracts Shall be in Writing – All expenditures for the purchase of materials, equipment, and supplies regardless of price shall be made pursuant to a contract. All District contracts shall be in writing in a form prescribed by the General Manager and approved by the General Counsel. At minimum, each contract shall include the relevant scope of work, duration, and terms of payment.

Authority: Water Code § 60230.5.

(d) **Board Approval of Contracts; Signing of Contracts.**

- (i) \$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)ii.

- (ii) 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 person or 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)

Where the purchase of materials, supplies and equipment has previously been authorized by the Board, the General Manager, when it has been determined that it will be in the best interest of the District to do so, may, during the term of the original authorization, purchase from the vendor additional quantities or services, provided the additional cost thereof does not exceed twenty-five percent (25%) of the amount originally authorized.

- (e) 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 Person seeking a contract with the District.

Authority: Government Code § 87100.

- (f) Claims Against the District – All claims against the District are subject to the Claims Presentation procedures of the District’s Administrative Code, these Procurement Policies and Procedures, and the provisions of California Government Code sections 900, *et seq.* Alternatively, claims may be submitted by mutual agreement to mediation or binding arbitration.

10.2.2 Competitive Bidding

- (a) Before advertising for any bid, District staff shall obtain Board approval of the Contract Solicitation.
- (b) Less than \$25,000 – Where the amount or value involved is less than twenty-five thousand dollars (\$25,000.00), an informal 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. Every attempt shall be made to receive at least three price quotations.
- (c) \$25,000 or More – Before making any contract totaling \$25,000.00 or more within any 12 month period, the District shall advertise for bids by issuing a Contract Solicitation.
- (d) The District shall advertise the Contract Solicitation in a newspaper of general circulation in Los Angeles County at least once a week for four consecutive weeks.
 - (i) The District may advertise Contract Solicitations in a publication of the respective professional society or other publication reasonably calculated to reach its intended audience. The 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) The 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;
 - (ii) That the Board will receive sealed bids for the contract;
 - (iii) That the contract will be awarded to the lowest responsive and responsible bidder; and
 - (iv) That bids will be publicly opened at a given time and place.
- (f) 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 Contract Solicitation.
- (g) No Contract Solicitation shall be prepared in a manner that limits participation to a single concern, entity or person 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.

In issuing any Contract Solicitation or awarding any contract, the District shall not discriminate against any contractor or consultant on the basis of race, color, religion, sex, marital status or national origin.

After issuance of a Contract Solicitation, the District shall not change any material provision in the Contract Solicitation except by issuance of a formal written addendum to the Contract Solicitation.

- (h) All bids for the purchase of materials, supplies, and/or equipment, 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.

- (i) 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.
- (j) Following the public opening of bids, the Board may do any of the following:
 - (i) Let the work to the lowest responsible bidder;
 - (ii) Reject any or all bids and re-advertise for proposals; or
 - (iii) In the case of contracts for the purchase of materials only, the Board may reject all bids and thereafter may solicit offers from not less than three responsible persons to furnish materials.

Authority: Water Code §§ 60602, 60606, 60608, 60612, 60616; Public Contract Code § 1103

- (k) Upon an award of a contract for materials, supplies and/or equipment to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the District beyond 60 days from the time the award is made.
- (l) Every contract for materials, supplies and/or equipment awarded by the District shall provide for the filing with the District of separate payment and performance bonds, when applicable, in accordance with the provisions of Civil Code Sections 3247 and 3248. Failure to comply with the requirements of this Section within ten (10) days of award of the contract for materials, supplies and/or equipment shall cause revocation of the award, and the bidder shall forfeit its bid security. Thereafter the Board at its discretion may award a contract for the project as provided herein.
- (m) 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 3248, is issued by an admitted surety insurer, and complies with any additional requirements set forth in the 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 (i) verifying that the payment bond is in the form previously approved by the General Manager

and the General Counsel, (ii) 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 (iii) ensuring that the payment bond is in the proper amount and complies with any additional requirements set forth in the Contract Solicitation.

- (ii) Performance bonds, when applicable, 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 § 60610, 60620; Business & Professions Code §§ 7000, *et seq.*; Civil Code §§ 3247, 3248

- (n) Bidders shall furnish to the District satisfactory proof of all insurance required by law, the Contract Solicitation, and any other contract. 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) days of award of the contract for materials, supplies and/or equipment shall cause revocation of the award, and the bidder shall forfeit its bid security. Thereafter the Board at its discretion may award a contract for the project as provided herein.

10.2.3 Exceptions

Except as otherwise provided in these Procurement Policies and Procedures, the advertising requirements of Sections 10.2.1 do not apply to any of the following contracts:

- (a) Contracts with public entities and cooperative funding agreements undertaken to perform the purposes and activities of the District.
- (b) 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.
- (c) 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.

Authority: Water Code § 60602(c); Public Contract Code §§ 1102, 20168, 2205010.2.4

10.2.4 Splitting Orders Prohibited

It is unlawful to split or separate into smaller orders the purchase of supplies, materials or equipment for the purpose of evading the competitive bidding provisions of this Chapter.

10.2.5 Bidder Responsibility and Prequalification

(a) Bidder Responsibility

A “responsible” bidder means a bidder 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. The District shall determine whether the bidder is “responsible” by considering the following:

- (i) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (ii) The ability of the bidder 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 bidder;
- (iv) The prior and current compliance by the bidder with applicable law;
- (v) The sufficiency of the bidder’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 bidder 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 a bidder is “responsible.” Such questions may concern, without limitation, the bidder’s prior experience on projects of a similar nature and size, the bidder’s technical capabilities, the bidder’s financial capability, and the bidder’s references.

(b) Pre-qualification

Should the District determine that the scope, technical complexity, or other unusual features of a proposed project warrant the prequalification of

bidders, or that it would be in the District's best interests to pre-qualify bidders 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. Any such pre-qualification procedures shall be first approved by the General Manager and the General Counsel.

Authority: Public Contract Code §§ 1103, 20101

10.2.6 Withdrawal of Bids

Bids may be withdrawn by bidders at any time before the deadline for submission of bids set forth in the applicable 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 Contract Solicitation and these Procurement Policies and Procedures.

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:

- (a) A mistake was made;
- (b) The bidder gave the public entity written notice within five calendar days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred;
- (c) The mistake made the bid materially different from what the bidder intended it to be; and
- (d) 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.

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.

10.2.7 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.

10.2.8 Forfeiture of Bid Security

If the bidder who has been determined by the District to be the lowest responsive and responsible bidder 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 difference between the rejected bid and the next lowest responsive bid accepted by the District. Thereafter, the Board may at its discretion award a contract for the project as provided in these Procurement Policies and Procedures.

10.2.9 Small Business Enterprise Outreach Program

It is the District's policy to encourage and promote broad-based participation in its contracting activities by all potential participants so as to maximize competition for District Contracts, to attract the greatest number of qualified bidders and to stimulate participation by responsible bidders who might otherwise be prevented from participating in the District's procurement activities.

- (a) Small Business Enterprise (SBE) Outreach Program. The District's program is adopted pursuant to Public Contract Code Section 2002. For purposes of this section, a Small Business Enterprise (SBE) shall mean a small business enterprise certified as such by any branch of the Federal Government, the State of California, or by any other Public Entity within the State of California as defined by California Public Contract Code Section 1100.
- (b) SBE Subcontractor Participation Goal. Notwithstanding the requirement that the District award a contract to the lowest responsive and responsible bidder, all bidders for contracts greater than \$100,000.00 must subcontract not less than 20% of their bid amount to SBEs or demonstrate

that they made good faith efforts to do so. The District will reject as non-responsive bids by Bidders who fail to either meet the SBE Subcontractor Participation Goal or to demonstrate that they made a good faith effort to meet the SBE Subcontractor Participation Goal.

- (i) The term “subcontractor” for purposes of the SBE Subcontractor Participation Goal shall have the meaning set forth at Public Contract Code Section 4113 but shall also include suppliers and material men.
- (ii) The term “Good Faith Efforts” shall refer to objective criteria formulated and applied uniformly and incorporated in applicable District Contract Solicitations by District staff in consultation with District counsel which shall include:
 - (1) Evidence that the bidder has identified portions of the work that may be subcontracted to SBEs;
 - (2) Evidence that the bidder has contacted SBE certifying agencies to identify potential SBE subcontractors for the portions of the work to be subcontracted;
 - (3) Evidence that the bidder has sent written invitations to bid to SBE subcontractors so identified or to other SBE subcontractors eligible for the work to be subcontracted; and
 - (4) Evidence that the bidder has attempted on at least two occasions to follow up its written invitations to bid and the results of those attempts.
- (c) To qualify for the SBE Subcontractor Participation Goal, SBEs must be certified as such at the time a bid is submitted to the District. Proof of certification must be submitted to the District not later than two business days after the deadline for submitting bids. Proof shall include a copy of each SBE’s certification or other appropriate documentary evidence by the certifying public entity. Proof of certification shall be subject to verification by the District.
- (d) Before advertising for bids, the Board may modify the subcontractor participation requirement created by this section for particular procurements, or exempt particular procurements from the subcontractor participation requirement, if the Board determines that it would be in the District's best interest to do so based on the nature of the services, equipment or materials to be procured or other relevant factors.

Authority: Pub. Cont. Code § 2002

10.2.10 Bidder Protest of Award

A bidder 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. The protest must be received by the District before the Board action to approve the award of the contract in question; the Board will not consider the award of any contract where the bid opening has taken place 72 hours or less prior to the Board meeting. The General Manager in consultation with the General Counsel shall investigate the grounds for the protest, examine the documentation, make inquiries as necessary, and accept or reject the protest in writing within five working days of receipt. If the protest is accepted, the District may at its discretion reject the bid or proposal in question and thereafter award the contract in accordance with these Procurement Policies and Procedures or else reject all bids or proposals.

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 the second 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.

Bid protests that do not comply with the deadlines and filing requirements set forth above shall not be considered. The award of any contract by the District shall be contingent on the final resolution of any protests thereof.

10.2.11 Required Forms

Contract Solicitations shall be accomplished using a form approved by the General Manager and the General Counsel.

10.2.12 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.

10.2.13 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.

10.2.14 Sole Source Contracts

The District is authorized to suspend the competitive bidding process and enter into a sole source agreement with a particular service provider or contractor only 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 proposals work an incongruity and are unavailing, or that competitive proposals do not produce any advantage. The Board must also adopt the sole source contract.

10.3 PROFESSIONAL SERVICES CONTRACTS

10.3.1 GENERAL PROVISIONS

(a) Definitions

Board. The Board of Directors of the Water Replenishment District of Southern California.

Contract Solicitation. The term Contract Solicitation shall include any and all means by which the Water Replenishment District of Southern California seeks proposals, bids or prices, including without limitation requests for proposal, requests for qualifications and invitations to bid, for the purpose of entering into a contract totaling twenty-five thousand dollars (\$25,000.00) or more.

Director. A member of the Board of Directors of the Water Replenishment District of Southern California

District. The Water Replenishment District of Southern California.

General Counsel. The General Counsel of the Water Replenishment District of Southern California.

General Manager. The General Manager of the Water Replenishment District of Southern California.

Person. Person refers to any natural person, corporation of any kind, partnership of any kind, business entity of any kind, organization, association, or governmental entity.

President. The President of the Board of Directors of the Water Replenishment District of Southern California.

Professional Services Contract. Contracts for professional services 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; legal services that are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services; and special services and advice in financial, economic, accounting, engineering, legal

or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.

Secretary. The Secretary of the Board of Directors of the Water Replenishment District of Southern California.

- (b) Intent – These Procurement Policies and Procedures shall govern all contracts for professional services by the District and shall be incorporated by reference into all Contract Solicitations issued by the District and 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 to District personnel and all other Persons in the carrying out of any contract procurements by the District.
- (c) All Contracts Shall be in Writing – All expenditures for professional services regardless of price shall be made pursuant to a contract. All District contracts shall be in writing in a form prescribed by the General Manager and approved by the General Counsel. At minimum, each contract shall include the relevant scope of work, duration, and terms of payment.

Authority: Water Code § 60230.5.

(d) Board Approval of Contracts; Signing of Contracts

- (i) \$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)

- (ii) 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 person or 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

The General Manager's authority as set forth herein shall not be used for the payment or contracting of local, state or federal advocacy services.

- (e) 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 Person seeking a contract with the District.

Authority: Government Code § 87100.

- (f) Claims Against the District – All claims against the District are subject to the Claims Presentation procedures of the District's Administrative Code, these Procurement Policies and Procedures, and the provisions of California Government Code sections 900, *et seq.* Alternatively, claims may be submitted by mutual agreement to mediation or binding arbitration.

10.3.2 Request for Proposal

- (a) Before making any contract for professional services, the District may solicit a request for proposal for such services. However, a request for proposal is not required for professional services contracts.
- (b) \$25,000 or more – Requests for proposals equal to or greater than twenty-five thousand dollars (\$25,000.00) shall be advertised in a publication of the respective professional society or by any other means reasonably calculated to reach its intended audience.
- (c) Less than \$25,000 – Where the amount or value involved is less than twenty-five thousand dollars (\$25,000.00), an informal solicitation may be made by the General Manager by informal quotes through telephone, mail or electronic inquiry, comparison of prices on file or otherwise. Every attempt shall be made to receive at least three price quotations.
- (d) Before issuing any request for proposal, District staff shall obtain Board approval.

(e) Evaluation of Request for Proposals and Award of Contracts for Professional Services

- (i) Upon review and receipt of the request for proposal from interested firms, the District shall select therefrom, in order of preference, based upon criteria established by the District, 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 firms identified in Subsection (a) regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

After meeting with the firms, the District shall select therefrom, in order of preference, based upon criteria established by the District, no less than three of the firms deemed to be most highly qualified to provide the services required.

Authority: Water Code § 60602(c)(6), Government Code § 4527(a).

- (ii) The District shall thereafter negotiate a contract with the firm ranked highest by the District at 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 in accordance with these Procurement Policies and Procedures 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 § 4528(a).

(f) Proof of Insurance

Bidders 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) days of award of the Contract for Professional

Services shall cause revocation of the award. Thereafter the Board at its discretion may award a contract for the project as provided herein.

10.3.3 Request for Qualifications

The District from time to time may issue a request for qualifications for the purpose of developing a list of qualified consultants to provide professional services for future work. Request for qualifications may be advertised in a publication of the respective professional society or by any other means reasonably calculated to reach its intended audience.

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.

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.

10.3.4 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.

10.3.5 Sole Source Contracts

The District is authorized to suspend the competitive bidding process and enter into a sole source agreement with a particular service provider or contractor only 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 proposals work an incongruity and are unavailing, or that competitive proposals do not produce any advantage. The Board must also adopt the sole source contract.

APPENDIX

Business & Professions Code:

§ 7000

Civil Code:

§ 3247

§ 3248

Government Code:

§ 87100

Public Contract Code:

§ 1100

§ 1102

§ 1103

§ 4113

§ 20101

§ 20168

§ 22050

Water Code:

§ 60602

§ 60606

§ 60608

§ 60610

§ 60612

§ 60616

§ 60620

§ 60622

§ 60230.5

1383117.1



MEMORANDUM

ITEM NO. 5

Prepared by: Abbie Andom

Reviewed by: Scott M Ota

Approved by: Robb Whitaker

DATE: MARCH 25, 2010

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: CEQA POLICY

SUMMARY

The Administrative Committee requested a review of the District's compliance with the California Environmental Quality Act ("CEQA") for applicable projects.

The Committee requested District Counsel review MWD's Administrative Code - CEQA compliance policy. That policy provides timelines for MWD's General Manager to follow in ensuring CEQA compliance for MWD projects. MWD's policy, in pertinent part, states:

Division XI

MISCELLANEOUS

Chapter Sec.

1 Environmental Matters 11100

2 Other Matters 11200

3 Purpose and Effect of Adoption of Administrative Code 11300 Chapter 1 ENVIRONMENTAL MATTERS Sec.

11100. Time Limitation for Completion of Certain Documentation § 11100. Time Limitation for Completion of Certain Documentation.

(a) The maximum time limit for completion of environmental impact reports for District projects described in subdivision (c) of Public Resources Code Section 21065 shall be one year.

(b) The maximum time limit for completion of negative declarations for District projects described in subdivision (c) of Public Resources Code Section 21065 shall be 105 days.

(c) The time limits provided for in Sections 11100(a) and 11100(b) shall be measured from the date on which an application requesting approval of a project subject to such limits is received and accepted as complete by the General Manager.

(d) The General Manager is delegated the authority to adopt lists and criteria by which to determine the completeness of applications.

(e) Reasonable extensions of the aforesaid time periods may be made by the General Manager in the event Title 14 California Administrative Code Section 15109 or other applicable law permits additional time.

(f) This chapter is only applicable to projects for which the District is a lead agency as defined in Division 13 of the Public Resources Code and Division 6, Chapter 3 of 14 California Administrative Code.

At the December 8, 2009 Committee meeting, Director Kawasaki stated that she will meet with Special Counsel Deborah Fox regarding the possibility of a CEQA policy for applicable District projects. The report will be provided at the meeting.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

For discussion.