MEETING OF THE ADMINISTRATIVE COMMITTEE
OF THE BOARD OF DIRECTORS
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
4040 PARAMOUNT BOULEVARD, LAKEWOOD, CALIFORNIA 90712
12:00 P.M., MONDAY, AUGUST 9, 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 JULY 12, 2010
   Staff Recommendation: Approve as submitted.

4. FACILITIES USE POLICY AND PERMITTING REQUIREMENTS
   Staff Recommendation: For discussion.

5. COMMITTEE DELINEATION OF DUTIES
   Staff Recommendation: For discussion.

6. PROCUREMENT POLICIES AND PROCEDURES
   Staff Recommendation: Approve the revisions to Chapter 10 of the District's Administrative Code relating to procurement policies and procedures, and adopt Resolution No. 10-879.

7. CONSIDERATION OF REVISIONS TO THE ADMINISTRATIVE CODE
   Staff Recommendation: For discussion.

8. PROPOSED ADMINISTRATIVE CODE AMENDMENTS – CHAPTER 12 ELECTRONIC MEDIA/INTERNET POLICY
   Staff Recommendation: For discussion.

9. FISCAL YEAR 2010-11 BUDGET REVIEW
   Staff Recommendation: For discussion.

10. DEPARTMENT REPORT
    Staff Recommendation: For information.

11. DIRECTOR’S REPORTS, INQUIRIES AND FOLLOW-UP OF DIRECTIONS TO STAFF
12. **ADJOURNMENT**

Posted by Abigail C. Andom, Deputy Secretary, August 4, 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](http://www.wrd.org).
A meeting of the Administrative Committee of the Board of Directors of the Water Replenishment District of Southern California was held on July 12, 2010 at 12:33 p.m. at the District Office, 4040 Paramount Boulevard, Lakewood, California. Chairperson Willard H. Murray, Jr. called the meeting to order and presided thereover. Deputy Secretary Abigail C. Andom recorded the minutes.

1. **DETERMINATION OF QUORUM**
   Attendees included:
   - **Committee:** Directors Willard H. Murray, Jr. and Lilian Kawasaki
   - **Staff:** Robb Whitaker, Scott Ota, Jenna Shaunessy, District Counsel Jamie Casso, Special Counsel Bianca Sparks

2. **PUBLIC COMMENT**
   None.

3. **MINUTES OF THE MEETING OF JUNE 14, 2010**
   The minutes were received and filed.

4. **FACILITIES USE POLICY & PERMITTING REQUIREMENTS**
   District Counsel Jamie Casso stated that the item before the Committee’s consideration refers to a proposed policy regarding the use of the District’s facilities by members of the public when it is not being used by the District for its official business.

   Discussion followed and the Committee asked that the item be continued to the next meeting.

5. **COMMITTEE DELINEATION OF DUTIES**
   The Committee reviewed the list of standing committees the District has and their responsibilities. The Committee recommended that staff review the responsibilities, make changes as appropriate for the Committee’s consideration and continue the item to the next meeting.

   The agenda items were taken out of order.
3. **DEPARTMENT REPORT**

Mr. Casso stated that on June 20, 2008, the Board considered changes to the Administrative Code relating to electronic media and internet policy. At the meeting, the Board asked the Administrative Committee to further review the proposed changes and asked the Board members to submit their amendments, if any, to District Counsel. Mr. Casso stated that Counsel has not received any further comments from the Board members and that the Administrative Committee has not considered the item since that time.

Discussion followed and the Committee asked that the item be agendized for the next meeting.

6. **REVIEW OF REIMBURSEMENT OF EXPENSES FOR MEMBERS OF THE BOARD AND DISTRICT EMPLOYEES**

General Manager Robb Whitaker stated that at the June 18, 2010 Board meeting, a director request was made for the Administrative Committee to review reimbursement of expenses for members of the Board. Specifically, the request was that the Committee review reimbursement for travel by Board members to conferences where not all directors are invited.

Discussion followed and the Committee's interpretation of the District's Administrative Code, as it relates to Directors Travel, is that directors attending conferences and other similar events not necessarily open to all directors can be reimbursed for travel related expenses provided they are District-related travel.

Discussion also followed on the use of District credit cards.

7. **RECRUITMENT FIRM CONTRACT APPROVAL**

Mr. Whitaker stated that on June 18, 2010, the Board authorized the General Manager to enter into a contract with Teri Black and Associates, for an amount not to exceed $27,000, to perform the recruitment search for the Assistant General Manager position. He explained that the District also has an opening for a Water Quality Program Manager which will soon be vacant due to the retirement of a long time District employee.

Mr. Whitaker stated that, due to scheduling issues, the recruitment firm initially awarded the contract will not be able to assist the District in the time line required. Staff has since had discussions with several search firms to fill both positions and would like approval from the Board of Directors to authorize the General Manager to choose from the either the Roberts Consulting Group,
Alliance Resource Consulting, Inc., or Bob Murray and Associates for the search of the Assistant General Manager and Water Quality Program Manager, for an amount not to exceed $27,000 to fill the Assistant General Manager and Water Quality Program Manager positions.

The Committee concurred with staff's recommendation and requested the item be agendized for the July 16, 2010 Board meeting under Consent Calendar.

9. DIRECTOR'S REPORTS, INQUIRIES AND FOLLOW-UP OF DIRECTIONS TO STAFF
None.

10. ADJOURNMENT
With no other business to come before the Committee, the meeting was adjourned at 2:45 p.m.

Chair

ATTEST:

Member
DATE: AUGUST 9, 2010
TO: ADMINISTRATIVE COMMITTEE
FROM: ROBB WHITAKER, GENERAL MANAGER
SUBJECT: FACILITIES USE POLICY AND PERMITTING REQUIREMENTS

SUMMARY
The Administrative Committee at its July 12, 2010 meeting reviewed a proposed Facilities Use Policy. The Committee recommended the item be continued to this meeting.

The Administrative Committee requested that research be done concerning a possible Facilities Use Policy ("Policy"). The Policy would allow use of certain portions of the District's facilities by members of the public when they are not being used by the District for its official business. District staff have identified five areas of concern regarding the proposed Policy – 1) the scope of the District's discretion to control the use of the facilities, 2) the District's authority to allow alcohol service and sale at events using the facilities, 3) the District's ability to require a user to provide liability insurance, 4) whether the District should allow members of the public to use the facilities on weekends, and 5) whether the District should have standards or requirements for caterers. This memorandum will address each of these issues and present the District's options for drafting a user-friendly Policy.

Analysis

1. Use of District Facilities

If the District chooses to open up its facilities for public use, it must ensure that restrictions on the use of its facilities are viewpoint neutral and reasonable in light of the purpose served by the facilities, which is to carry out the District's policies and programs for groundwater management.

The law currently permits the District to allow some groups to use the facilities while excluding others, but the basis for the distinction must be viewpoint neutral and reasonable. For example, the District could restrict access to non-profit groups and exclude profit-based organizations. Non-profits are performing a service for the community, which is in keeping with the purpose of the forum. This policy would not
discriminate based on viewpoint because the distinction would be made based on the tax status rather than the particular message of the group involved.

If the District wants to limit the use of its facilities, the District should develop a policy based on the constitutional standard discussed above and stick to that policy with no exceptions. The District should not determine whether it will allow a particular group and exclude another on a case by case basis, unless objective criteria are utilized (such as the ability to pay the use fee, number of people at the event, etc.), because such a policy would provide the District with too much discretion to determine whether a particular group is "suitable" and would likely be struck down as violating the "viewpoint neutrality" requirement.

a. Facility Fee

Under current case law, the District can charge a reasonable fee for use of the facilities. The fee could cover the District's expenses for administration and personnel and perhaps maintenance expenses, if such expenses could be identified for the period when the facilities are being used. The fee cannot be so great that it exceeds the District's expenses for allowing the organization to use the facility, because such a fee could potentially be construed as an improper tax. The District may also charge different fees for different individuals/groups, however that type of fee policy would need to be reasonable and viewpoint neutral.

b. District Parking Lot

The District could rent the parking area for events, but holding a private event in a parking lot raises some additional considerations that are not in play when the event is held inside a building. Since an outside event is far more likely to draw public attention and curiosity, the group renting the lot would need a security guard or other staff to restrict access to persons who are not invited to the event.

2. Alcoholic Beverages

The District may allow organizations to serve alcohol at events held at District facilities. If alcohol will be sold at the event, the organization renting the facility will need to obtain a license or authorization from the Department of Alcoholic Beverage Control.

3. Insurance Requirement

The District can and should require the user to provide liability insurance and name the District as an additional insured. The insurance policy should indemnify the District from all loss, damage, claims or liability suffered by the District as a result of the organization's use of the District's facilities. Courts have had mixed reactions to requirements that a user provide a specific amount of insurance, finding in some cases that this allows the government too much discretion to discriminate against a particular type of use by requiring a high level of insurance that the user simply cannot provide.
(See Courtemanche v. GSA, 172 F.Supp.2d 251 (2001).) To avoid this potential pitfall, the amount of insurance should be left to the discretion of the user.

4. Weekend Rental of District Facilities

The District may rent its facilities on both weekdays and weekends. However, if employees volunteer to staff weekend events, the District must comply with State law and its own employee policies regarding payment, overtime and other employment issues. (See Water Replenishment District Administrative Code, Section 11.6.)

5. Catering Services

Under State law, caterers are required to serve food in a safe, sanitary manner and protect the food from contamination. Caterers must obtain a Public Health Operating License from the Los Angeles County Health Department. If a caterer serves alcohol, he/she must have a caterer’s license issued by the California Department of Alcoholic Beverage Control as well as a permit for the specific event being catered. The District should require a caterer to provide proof that he/she has the requisite licenses and permits to cater the event. The District can also require a caterer to provide everything necessary for service of food or beverages, including staff.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
For discussion.
WATER REPLENISHMENT
DISTRICT OF SOUTHERN CALIFORNIA
FACILITIES USE POLICY

1. PURPOSE OF POLICY
The purpose of this Facilities Use Policy is to make available to members of the public certain portions of
the Water Replenishment District of Southern California ("District") building on reasonable terms and
conditions.

2. FACILITIES AVAILABLE FOR PUBLIC USE
Those portions of the District building which are available for use pursuant to this policy are the conference
rooms, Board Room and parking lot. These facilities shall collectively be referred to as "Facilities."

3. USE OF FACILITIES
The Facilities may be used for [This section should describe who may use the facilities. The limitation must
be reasonable and viewpoint neutral]. Applicants must be 21 years or older and take responsibility for clean
up and damages.

4. RESERVATIONS
Subject to the limitations set forth in this Policy, the Facilities are available on a "first-come, first-served"
basis. The Facilities may be booked up to six months in advance by contacting the General Manager at
(562)921-5521. Notwithstanding the above, official District functions shall always have first priority for the
use of Facilities. In the event a Facility is needed for a District function, the District, at its discretion, may
change the reservation to a Facility different than the Facility originally reserved.

5. FEES
The District shall charge a use fee to recoup the cost of making the Facilities available for use by the public,
and shall have the right to recover costs associated with any damage to the Facilities. Please refer to the
Facility Use Fee Schedule for the applicable fees. In addition, the District shall require a non-refundable
deposit for use of the Facilities and, if alcohol is to be served and/or sold, the District shall require an
additional deposit to cover the potential costs of cleanup and damage. The alcohol deposit will be refunded
if the Facilities, after completion of the event, are in as good condition as they were prior to the event.

6. PROCEDURE
   a. The person ("Applicant") wishing to apply for use of the Facilities shall obtain an
      application from the District, and shall provide all information required on the application.
   b. Upon receipt of a complete application, a District staff person will contact the Applicant and
      indicate whether the desired Facilities are available for the date and time requested and, if so, will send a
      Fee Schedule, Conference Room Summary, and Facility Application and Agreement Form ("Form") to the
      Applicant. The Applicant must sign and return the Form to the District at least thirty (30) calendar days
      prior to the event. If the application is for use of the Facilities less than thirty (30) calendar days before the
      event, the Applicant shall, by contacting the number specified herein, schedule an in-person appointment
      with the General Manager, or his designee.
c. With the application, the Applicant shall also include a non-refundable application fee of Fifty Dollars ($50.00), which shall be credited towards any fees charged by the District for use of the Facilities.

d. Based on the information in the Form, the District will determine whether the proposed use is consistent with the District's Facilities Use Policy and will complete the portion of the Form to inform the Applicant as to the amount of insurance, deposit, use fee, staffing required, and other reasonable terms and conditions the District may impose on the use of the Facilities. The District will then notify the Applicant in writing, of the above stated requirements. After the District has informed the Applicant of the additional requirements, the District must receive the use fee, additional deposit (if any), proof of insurance, and any other documentation requested by the District, at least ten (10) calendar days prior to the event. If the District does not receive the documentation within the appropriate time, the Applicant will be deemed to have withdrawn its application for use of the Facilities.

7. TIMING OF RESERVATION
The District's Facilities shall not be deemed as having been reserved by an Applicant unless and until the District receives the deposit(s), use fee, proof of insurance in the forms requested by the District, and other documents consistent with the terms and conditions set forth in the Form. Upon receipt of a completed Form and all required documents, the District shall inform the Applicant in writing that the reservation is complete.

8. REVENUE PRODUCING ACTIVITIES
Only qualified non-profit organizations may sell items or otherwise engage in fundraising activities when using District facilities. For purposes of this policy, a “qualified non-profit organization” shall be defined as a tax exempt organization under Internal Revenue Code section 501(c). No solicitations or requests for contributions or donations of any kind for any cause or purpose are allowed except for qualified non-profit organizations.

9. USE OF DISTRICT PROPERTY
If requested in advance by the Applicant, the District may allow use of its equipment on a case-by-case basis.

10. INDEMNIFICATION; INSURANCE
The District shall require the Applicant utilizing the facilities to indemnify and hold harmless the District, its elected officials, its officers, employees, agents, and volunteers from any and all losses, damages, claims, or costs of any nature stemming from the event and the Applicant's use thereof. The District shall also require the Applicant to provide insurance in a form and an amount, and from a carrier, acceptable to the District's General Counsel. The District shall be named as an additional insured under Applicant's coverage. In addition, this insurance as respect to any claim, loss or liability arising directly or indirectly from Applicant's activities at the District shall be the only insurance utilized, and any other insurance maintained by the District shall be considered noncontributing.

11. USE RESTRICTIONS
   a. The following activities or items are prohibited:
      • Pyrotechnics;
      • Candles, lanterns, incense, or open flames;
• Mylar or plastic confetti;
• Smoking;
• “Silly String”;
• Decorations or other items that will damage building surfaces, such as nails, fasteners, glue, or other adhesives;
• Smog or fog generating devices;
• Any act which may cause harm, damage, or loss to District owned or leased structures, equipment, buildings, or supplies;
• Any modification to the Facilities, District’s property or premises;
• Animals, excluding service animals; and
• Bicycles, skateboards, scooters, roller skates, rollerblades, or similar items, except in the parking lot.

b. The number of persons in any area shall not exceed the posted occupancy limit.

c. All exit doors shall remain unlocked and shall not be obstructed by any means for any reason during the entire event.

d. The District is not responsible for lost or stolen items. The District is not responsible for any items delivered before an event or left after an event.

12. COMPLIANCE WITH APPLICABLE LAW
Applicant’s use of the Facilities shall comply with the ADA, as well as all applicable local, State, and federal rules, regulations, and statutes.

13. SIGNAGE
The Applicant may not post any signage outside of the Facilities, other than directional signs. Such directional signs must be approved by the District’s General Manager, or designee thereof, at least three (3) business days before the event. Such directional signs must also be consistent with District policy. Such signage, to the extent possible, shall be posted only during the event, unless the Applicant obtains the prior written approval from the General Manager, or designee thereof.

14. ALCOHOLIC BEVERAGES
The District reserves the right to determine whether or not alcoholic beverages may be served/sold. Under no circumstances shall alcoholic beverages be sold or served to anyone who is under 21 years of age. Applications for events with alcoholic beverages shall only be considered if accompanied by proof of appropriate insurance coverage and any necessary permits (including ABC permit if alcohol is to be sold).

15. CATERING SERVICES
The Applicant may use a third party catering service for the event. Any caterer hired by the Applicant shall furnish the District with proof of current licenses from the Los Angeles County Health Department and shall maintain all requisite licenses and permits to cater the event. In the event the caterer serves alcoholic beverages, the caterer shall furnish the District with proof of a current license from the California Department of Alcoholic Beverage Control.
16. DISTRICT DISCLAIMER
The following disclaimer must be included in any published announcement:

"WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA NEITHER SUPPORTS NOR ENDORSES THE CAUSE NOR ACTIVITIES OF ORGANIZATIONS WHICH USE DISTRICT FACILITIES THAT ARE MADE AVAILABLE AS A PUBLIC SERVICE"

17. USE OF PARKING AREA
Parking areas located at the District's building may be used for vehicle parking and for the event. The District reserves the right to restrict parking to assigned areas of the parking lot.

18. RIGHT TO TERMINATE
The District reserves the right to terminate use of the Facilities by the Applicant at any time.

19. NON DISCRIMINATION
Groups using the Facilities may not discriminate against anyone with regard to race, creed, color or national origin.

1478539.3
Facility Application and Agreement Form
Water Replenishment District of Southern California
4040 Paramount Boulevard
Lakewood, CA, 90712
Phone: (562) 921-5521
Fax: (562) 921-6101

Name of Organization: __________________________________________________________
Name of Applicant: ______________________________________________________________
Address: ____________________________________________________________________
Phone Number: (day) ______________________ (evening) ______________________ (cell) ______
E-mail address: __________________________________________________________________
Nature of Proposed Use: (meeting, banquet, etc.) ______________________________________
Anticipated number of attendees: Adults:___________ Children (under 18): ______________
Date Facilities are requested: ________________________________________________
Hours of Use: ___________________________ Hours of Event (if different) ______________
Proposed Set up, with attached drawing if possible:
(number of requested tables, chairs, etc): ____________________________________________
Equipment Proposed to be used: ________________________________________________
Alcohol being served? □ Yes □ No
t (If alcoholic beverages are being served/sold, an additional deposit is also required.)
Alcohol being sold? □ Yes □ No
t (If alcoholic beverages are sold, an ABC Permit is required & copy to be provided to General Manager 10 days prior to event)

Catering Services? □ Yes □ No
Name of Caterer: __________________________________________________________________
Address: ____________________________________________________________________
Phone Number: (day) ______________________ (evening) ______________________ (cell) ______
(If catering services are used, caterer must provide copies of all licenses to General Manager 10 days prior to event)

Facility area for reservation are limited to the following areas:
□ Gage Conference Room □ Hollydale Conference Room □ Silverado Conference Room
□ Sunnyside Conference Room □ Board Room □ Parking Lot*

* Only check parking lot if the event is to be held in the parking lot, otherwise the parking lot is limited to parking vehicles only.

IMPORTANT – PLEASE READ THE INFORMATION BELOW
I declare that the foregoing information is true and correct. I am aware that I will not have reserved the District facility until the District receives the deposit(s), use fee, the insurance in the forms requested by the District, and other documents consistent with the terms and conditions set forth in the Form. I agree to comply with the District’s Facilities Use Policy, attached hereto. I further agree to indemnify and hold harmless the District its elected officials, officers, employees, agents, and
volunteers from any and all losses, damages, claims, or costs of any nature stemming from the event and my use thereof.

Signature of Applicant

Date

To be completed by the District if it determines that the use is permitted under the District’s Facilities Use Policy and that the requested facility is available for the date and time requested.

The following requirements must be met in order to reserve the requested District Facility:

Security Deposit $________________ Facility Use Fee $________________
(Non refundable)

Alcohol Deposit $________________

Insured Endorsement to be provided, listing the District as an additional insured (required 7 days prior to event)

Type of Insurance: ____________________________

Amount of Insurance: ____________________________

Staffing levels: ____________________________

Other terms and conditions: ____________________________

If the conditions and terms set forth above are met and applicant provides the requested documentation at least ten (10) calendar days prior to the event, the above indicated District Facilities shall be deemed to be reserved by the applicant.

Date: __________________

General Manager/Designee: __________________
DATE: AUGUST 9, 2010
TO: ADMINISTRATIVE COMMITTEE
FROM: ROBB WHITAKER, GENERAL MANAGER
SUBJECT: COMMITTEE DELINEATION OF DUTIES

SUMMARY
The Administrative Committee at its July 12, 2010 meeting reviewed the responsibilities of each Standing Committee of the Board of Directors as currently outlined in Section 3 of the Administrative Code. Discussion followed and the Committee requested staff to review the responsibilities of each committee, make changes as appropriate for the Administrative Committee’s consideration and continue the item to this meeting.

Staff will provide additional information about the current duties of each committee based on the Administrative Code.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
For discussion.
DATE: AUGUST 9, 2010

TO: BOARD OF DIRECTORS

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: PROCUREMENT POLICIES AND PROCEDURES

SUMMARY
The Administrative Committee requested a review of the District’s procurement policies and procedures, which can be found in Chapter 10 of the District’s Administrative Code. The policies and procedures were revised to ensure compliance with best public agency practices and applicable statutory restrictions.

The proposed Procurement Policies and Procedures were agendized for Board approval at the May 21, 2010 Board meeting. At the Board meeting, the Administrative Committee Chair requested the item be referred back to the Committee for further review.

Based on the Administrative Committee’s recommendations, and best practices, the policies and procedures were revised as follows:

1. The policies and procedures are now divided into three stand alone sections: construction contracts; contracts for the purchase of materials, supplies and equipment; and professional services contracts.
2. Each section now contains clear guidelines on when a contract must be put out for a request for proposals (RFP), request for qualifications (RFQ) or bid and the requirements for the procurement process.
3. Provisions concerning when Board approval for a contract is required and when General Manager’s approval for a contract is allowed is now included in each section.
4. Each section now contains provisions regarding Board approval for request for proposals and requests for qualifications.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
Approve the revisions to Chapter 10 of the District’s Administrative Code relating to procurement policies and procedures, and adopt Resolution No. 10-879.
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, sowing, 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.
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.

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.

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)

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) 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) 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;

(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 materialmen.

(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.


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.

10.1.15 Design Build

This Section is reserved for design build policies to be adopted in accordance with Public Contract Code Section 20193 et seq.

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.

10.1.2 Intent

(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.

10.1.3 All Contracts Shall be in Writing

(c) All Contracts Shall be in Writing – All expenditures for construction work, the purchase of materials, equipment, and supplies, and professional services, including, but not limited to, legal, legislative, public affairs, public relations, and engineering 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.

10.1.4 Board Approval of Contracts; Signing of Contracts

(d) $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 district representative to sign contracts and other
documents in the name of the district, not to exceed twenty-five thousand dollars ($25,000). 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) may be approved and signed by the district manager or other district representative authorized by the board of directors, provided, however, that the 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) or more, without the board’s prior approval.

Authority: Water Code § 60622(B).

**10.1.5 Prohibition Against Unlawful Activities**

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.

**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.

**10.1.6 Claims Against the District**

**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.

10.1.7 Advertising for Contracts

10.2.2 Competitive Bidding

(a) Before advertising for any bid, District staff shall obtain Board approval of the Contract Solicitation.

(b) 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) (a) Before making any contract totaling twenty-five thousand dollars ($25,000) or more within any 12-month period, the District shall advertise for bids by issuing a Contract Solicitation.

Authority: Water Code § 60602(a)

(b) Notwithstanding subdivision (i), if a proposed expenditure described in the annual District budget for any item of supplies or services equals or exceeds twenty-five thousand dollars ($25,000), the District shall advertise for bids before making any contract for that item during the year to which that budget applies.

Authority: Water Code § 60602(b)

(c) Except as otherwise provided in these Procurement Policies and Procedures, the advertising requirements of Sections (1)(g)(i) and (ii) do not apply to any of the following contracts:

- The recruitment, hiring and dismissal of District employees and officers.
  Authority: Water Code § 60602(c)(1).

- Contracts with other public entities undertaken to perform the purposes and activities of the District.
  Authority: Water Code § 60602(c)(2).

- Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered.
  Authority: Water Code § 60602(c)(3).
Contracts solely for the purpose of retaining expert witnesses for litigation.
Authority: Water Code § 60602(c)(4).

Contracts for proprietary information or systems.
Authority: Water Code § 60602(c)(5).

Contracts for professional services provided that they are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.
Authority: Water Code §§ 60602(c)(6)

Contracts for architectural, engineering, environmental, land surveying, geological or construction project management services provided they are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the California Government Code.
Authority: Water Code §§ 60602(c)(6)

Contracts for legal services that are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services.
Authority: Water Code § 60602(c)(7).

10.1.8 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.

40.1.9 Contract Solicitations

(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.

10.2 Construction Contracts

10.2.1 Definition of Construction Contract

A "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.

(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.

(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) 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: Civil Code § 3106.

40.2.2 Advertising for Bids. 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.

(I) 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.
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) Before making any Construction Contract totaling twenty-five thousand dollars ($25,000) or more, the District shall first advertise for bids as hereinafter set forth. A mistake was made;

Authority: Water Code §§ 60602(a), 60604.

(b) When the District is required to advertise for bids for a Construction Contract, the District shall do so by advertising in a newspaper of general circulation in Los Angeles County at least once a week for four consecutive weeks. 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;

Authority: Water Code § 60604.

(c) If less than the whole work provided for in the plans and specifications for a given construction project is to be performed by the Person to whom a Construction Contract will be awarded, the portion of the work to be performed must be particularly described in the advertisement for bids. The mistake made the bid materially different from what the bidder intended it to be; and

Authority: Water Code § 60606.

(d) Advertisements for bids shall set forth all of the following information: The mistake was made in filing 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.

That plans and specifications for the work to be done can be seen and obtained at the District’s offices;
• That the Board will receive sealed bids for the contract;
• That the contract will be awarded to the lowest responsive and responsible bidder; and
• That bids will be publicly opened at a given time and place.

Authority: Water Code § 606.008.

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 10.2.3 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 Contact 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 Construction Contracts to the lowest responsive and responsible bidder, all bidders for Construction Contracts greater than $100,000 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 materialmen.

(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: (i) evidence that the bidder has identified portions of the work that may be subcontracted to SBEs; (ii) evidence that the bidder has contacted SBE certifying agencies to identify potential SBE subcontractors for the portions of the work to be subcontracted; (iii) 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 (iv) evidence, and
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.

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.

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.


40.2.4 Submission of Bids; Bidders' Security; Return of Bidders' Security

For Construction Contracts totaling $25,000 or more:

(a) All bids for Construction Contracts shall be presented under seal to the District. Bids shall remain open and subject to acceptance by the District for not less than sixty (60) days following the Board action to approve the award of a contract.

(b) All bids for Construction Contracts shall be accompanied by bidder’s security, which shall remain in full force and effect, and subject to forfeiture, for the same period of time as bids are required to remain open and subject to acceptance. Bid security shall be in an amount to be determined by the District, but not less than 10% of the total amount of a bidder’s bid, and shall be in one of the following forms:

- Cash
- Cashier’s check made payable to the District
- Certified check made payable to the District
- Bidder’s bond issued and executed by an admitted surety insurer, made payable to the District in a form approved by the General Manager and General Counsel

(c) Upon award of a Construction Contract by the Board, the District shall return bidders’ security no later than sixty (60) days following such award.
10.2.5 Withdrawal of Bids

10.2.10 Bidder Protest of Award

Bids for Construction Contracts 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 given to 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. 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 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. 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.

The exclusive method for withdrawing bids after the deadline for submission of bids shall be pursuant to the provisions of Chapter 5 of Part 1, Division 2, of the California Public Contract Code, commencing with Section 5100, governing Relief of Bidders. Bids for Construction Contracts 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 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.

10.2.6 Opening of Bids

For Construction Contracts totaling $25,000 or more, all bids shall be publicly opened at the District’s offices immediately after the deadline for submission of bids. Two (2) District employees and/or representatives shall be present at all 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, and a list identifying the name of each bidder and the amount of its bid shall be produced and made available for inspection and copying as a public record.

10.2.7 Interpretation of Bids

In the event of any ambiguity in a bid submitted for a Construction Contract, 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 Award of Contracts

Following the public opening of bids for Construction Contracts totaling $25,000 or more, and any evaluation by the District of such bids, bidders, and other materials required to be submitted before the award of any Construction Contract, the Board at its sole discretion may:

(a) Award a contract to the lowest responsive and responsible bidder; or

(b) Reject all bids and, at the District’s discretion, re-advertise for bids for the contract; or

(c) Proceed to construct the construction project under its own superintendence.


10.2.9 Forfeiture of Bid Security

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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 Construction 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 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.

10.2.10 Performance and Payment Bonds; Proof of Contractor License; Proof of Insurance

The award of any Construction Contract by the Board is contingent upon the receipt and approval by the District of the bond and insurance documentation required by this paragraph, and upon the bidder’s compliance with the Contractors State License Law (Business & Professions Code Sections 7000, et seq.). The bond and insurance documentation required by this paragraph must be received by the District not later than ten (10) calendar days after the Board’s award of the contract, which period may be extended at the District’s discretion, but in no event later than the start of construction.

(a) Performance and Payment Bonds. The submission of a bid in response to a Contract Solicitation shall be deemed a representation by the bidder that it is ready, willing and able to submit the bonds and insurance documentation required by this paragraph if it is awarded a contract for the project, and that it is properly licensed pursuant to the Contractors State License Law to perform the work called for in the Contract Solicitation. The bid of any bidder who fails to comply with the requirements of this paragraph shall be deemed non-responsive, and the bidder shall forfeit its bid security. Thereafter, the Board at its discretion may award a contract for the project as provided in these Procurement Policies and Procedures.

Every Construction Contract awarded by the District shall provide for the filing with the District of separate payment and performance bonds. Authority: Civil Code §§ 3247, 3248; Water Code § 60620.

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.

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.

Authority: Civil Code § 3248.

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.

(b) Proof of insurance. Bidders shall furnish satisfactory proof of all insurance required by law, by the Contract Solicitation and the Construction Contract to the District. Such insurance shall include, without limitation, workers compensation insurance as required by California law.

(c) Licensed as Contractor. After bids are opened, but before a Construction Contract is awarded, the District shall verify that the successful bidder was 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.

Authority: Water Code § 60620;
Civil Code §§ 3247, 3248;
Labor Code §§ 3700, et seq.;
Business & Professions Code §§ 7000, et seq.

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 Emergency Solicitation of Construction Contracts

In the event of an emergency relating to the repair or replacement of District facilities, if notice for bids to let contracts will not be given, the District shall comply with Chapter 2.5 (commencing with Section 22050) of the Public Contract Code.

Water Code § 60614.

10.2.12 Contract Solicitations and Construction Contracts – Required Forms

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

Construction Contracts shall be in a form approved by the General Manager and the General Counsel.

10.2.13 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 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.

Before a bidder is deemed to be non-responsible and its bid rejected, the District shall notify the bidder in writing of the reasons for its preliminary finding that the bidder is non-responsible, and provide the bidder an opportunity to respond to those reasons. Upon receipt of a response from a bidder preliminarily determined to be non-responsible, the District shall make its final determination as to whether the bidder is responsible. If a bidder does not respond within five (5) working days from the date of a written notice from the District that the bidder has been preliminarily found to be non-responsible, the bidder shall be deemed to have consented to the District's preliminary finding of non-responsibility, and the District shall thereafter reject the bidder's bid.

(b) Prequalification

Should the District determine that the scope, technical complexity, or other unusual features of a proposed construction 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 Construction 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.


10.3 Contracts for the Purchase of Materials Only

10.3.1 Contracts for the Purchase of Materials Only—Defined

A contract for the purchase of materials only is an agreement between the District
and any Person for the purchase of supplies, materials, equipment, or other
tangible goods of any kind to be permanently incorporated in any public work of
improvement being undertaken by the District.

The provisions of this section shall be further governed by applicable provisions
concerning proprietary information or systems where the materials, equipment or
tangible goods involved require the use of said information or systems, and the
Board has made a determination concerning the need for said information or
systems.

10.3.2 Advertising for Bids and Award of Contracts—Contracts Equal To or Greater
Than $25,000

Before making any contract for the purchase of materials only totaling $25,000 or
more, the District shall first advertise for bids in a newspaper of general circulation
in Los Angeles County in the manner provided for by law. In addition, the District
may utilize any other reasonable method to notify qualified potential bidders of the
advertisement for bids.

Authority: Water Code § 60602.

(a) Contract Solicitations for contracts for the purchase of materials only
equal to or greater than $25,000 shall set forth all of the following
information:

• That the specifications or description of the materials to be purchased can
be seen and obtained at the District’s offices;

• That the District will receive sealed bids for the contract;

• That the contract will be awarded to the lowest responsive and
responsible bidder, or else the Board shall reject all bids.

• That bids will be publicly opened at a given time and place.

Authority: Water Code § 60616.
(b) Contracts for the purchase of materials only shall be awarded to the
lowest responsible and responsive bidder, or else the District shall reject
all bids.

Authority: Water Code § 60616.

(c) After rejecting all bids, the Board may thereafter re-advertise for bids as
provided above, or solicit responsive bids from not less than three
responsible bidders to furnish the materials. Upon receipt of a bid lower
than the lowest previously rejected bid, the Board may award a contract
for the furnishing of the materials to the bidder who submitted the lowest
price.

Authority: Water Code §§ 60616, 60618.

(d) The District shall follow the procedures for opening bids provided for the
opening of bids for Construction Contracts under these Procurement
Policies and Procedures.

10.2.11 10.3.3 Required Forms

Contract Solicitations for contracts for the purchase of materials only shall be
accomplished using a form approved by the General Manager and the General
Counsel.

Contracts for the purchase of materials only shall be in a form approved by the
General Manager and the General Counsel.

10.3.4 Emergency Solicitation of Contracts for the Purchase of Materials Only

In the event of an emergency, the District may solicit and enter into contracts for
the purchase of materials only in accordance with the provisions of Section 22050
of the Public Contract Code.

Water Code § 60614.

10.4 Contracts with Private Architects, Engineering, Geological, Land Surveying, and
Construction Project Management Firms

10.4.1 Selection Procedure Policy

The award of contracts by the District for architectural, landscape architectural,
engineering, geological, environmental, land surveying, and construction project
management services (hereafter "Professional Construction Services") shall be
based on demonstrated competence and qualifications for the types of services to
be performed at fair and reasonable prices to the District. Except as hereinafter
set forth, the District's Procurement Policies and Procedures for such services are
intended to be consistent with the provisions appearing at Chapter 10 of Division 5, Title 1, of the Government Code, commencing with Section 4525.

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

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.

10.2.15 Design Build

This Section is reserved for design build policies to be adopted in accordance with Public Contract Code Section 20193 et seq.

10.3 PROFESSIONAL SERVICES CONTRACTS

10.3.1 GENERAL PROVISIONS

(a) 10.4.2 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.

Architectural, Landscape Architectural, Engineering, Geological, Environmental, and Land Surveying Services. Includes those Professional Services Contract. Contracts for professional services of an architectural, landscape shall include, but shall not be limited to, architectural, engineering, geological, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform 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.

Authority: Government Code § 4525(d):

Construction Project Management. Those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the
requirements herein for management and supervision of work performed on District construction projects.

Authority: Government Code § 4525(e).

In addition to possessing the license required by the immediately preceding paragraph, any Person performing construction management services for the District, including personnel carrying out onsite responsibilities, shall possess demonstrated expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Authority: Government Code § 4529.5.

Environmental Services: Those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

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 § 4525(f), 87100.

10.4.3 Contract Solicitations and Advertising for Professional Construction Services

(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
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.

**Contract Solicitations for Professional Construction Services** totaling $25,000 or more shall be accomplished by issuance of a request for qualifications announcing the project for which the services are to be performed. The announcement shall be made in the 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 publication means reasonably calculated to reach its intended audience. The requests for qualifications 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. 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.

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

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(b) 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.

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.

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).

40.4.5 Required Forms

All Contract Solicitations for architectural, landscape architectural, engineering, geological, environmental, land surveying, and construction project management services shall be accomplished using a form approved by the General Manager and the General Counsel.

All Contract Solicitations for architectural, landscape architectural, engineering, geological, environmental, land surveying, and construction project management services shall be in a form approved by the General Manager and the General Counsel.

40.5 Professional Services Contracts

40.5.1 Contracts for Professional Services Including Legal Services

Contracts for professional services, including legal services, shall be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

Authority: Water Code §§ 60602(6), 60602(7)

40.5.2 Required Forms

All Contracts Professional Services shall be accomplished using a form approved by the General Manager and the General Counsel.
10.6 — Service Contracts

10.6.1 Solicitation and Award of Contracts for Services Other Than Professional Services

Contract Solicitations for services other than professional services totaling $25,000 or more shall be accomplished by issuance of a request for proposals. Requests for proposals for such services may be solicited from those firms that have indicated in advance their interest in providing the applicable service, by advertising in relevant trade publications, and/or by notice to lists of known providers.

(a) Contracts for services under this paragraph shall be awarded to the lowest responsible bidder. Before issuance of any Contract Solicitation for services under this paragraph, District staff shall, to the greatest extent possible for the type of service in question, develop objective criteria for the evaluation of proposals, which shall be included in the Contract Solicitation.

(b) Before making any contract for services under this paragraph totaling twenty-five thousand dollars ($25,000) or more, the District shall first advertise for requests for proposals in a newspaper of general circulation in Los Angeles County in the manner provided for by law.

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. Prior to issuing a request for qualifications, District staff shall obtain Board approval of the request for qualifications. 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.
Prior to negotiating a scope of work for any request for qualifications authorizing the District to expend ten thousand dollars ($10,000.00) or more, District staff shall obtain Board approval for the scope of work.

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

**Authority: Water Code**
§ 60602

### 10.6.2 Required Forms

All Contract Solicitations for services under this paragraph, including shall be accomplished using a form approved by the General Manager and the General Counsel.

All Contract Solicitations for services under this paragraph, including Professional Construction Services and other professional services, shall be in a form approved by the General Manager and the General Counsel.

1395714.1
§ 60606
§ 60608
§ 60610
§ 60612
§ 60616
§ 60620
§ 60622
§ 60230.5

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DATE: AUGUST 9, 2010

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: CONSIDERATION OF REVISIONS TO ADMINISTRATIVE CODE

SUMMARY
Pursuant to Section 7.2.6(b) of the District’s Administrative Code, Directors are provided with an annual travel budget in the amount of $7,500.00 for all District related travel.

A request has been made that the Administrative Code be updated to permit a Director to travel to any water conference without Board approval, so long as the travel is within the Director’s allocated travel budget.

FISCAL IMPACT
Directors travel is a budgeted item in the Fiscal Year 2010-11 budget.

STAFF RECOMMENDATION
For discussion.
7.2.6 Travel and Transportation Expenses

The Board of Directors shall approve requests for international travel (outside the 50 states) for Directors prior to reimbursable expenses being incurred.

Cut of state travel for staff shall be pre-approved by the Board of Directors. [BOD-12/18/2009]

The most economical mode and class of transportation consistent with scheduling requirements should be utilized. In the event a more expensive mode or class of transportation is utilized, the reimbursable amount shall be limited to the cost of the most economical mode or class of transportation available, not to cost of coach airfare.

Actual expenses for ground transportation to and from airports and while attending to District business shall also be reimbursed. Ground transportation shall include taxi, bus, train, standard automobile rental and any other reasonable mode of transportation.

The District's policy concerning reimbursement for travel expenses varies depending whether the destination is within or outside the "local area" and whether an individual receives or elects to receive a vehicle allowance. For purposes of this Policy, "local area" means a 40-mile radius from either one's residence or the District office, whichever is farther.

Members of the Board who do not elect to receive a monthly vehicle allowance pursuant to Section 7.2.1 of this Chapter and all employees who do not receive a monthly vehicle allowance may be reimbursed for travel outside the "local area," including travel by personal automobile instead of by air travel. In addition, Directors and all employees may request reimbursement for travel outside the "local area," including travel by personal automobile instead of by air travel, in addition to the monthly vehicle allowance, authorized by Section 7.2.1 of this Chapter.

Actual and necessary travel expenses may be incurred in connection with official representation of the District in order to:

Attend seminars, conferences, hearings, or other meetings related to the business of the District.
Interview persons, inspect facilities, or exchange professional information; and

Participate in other activities, as approved by the Board of Directors, requiring expenditures for travel, meals and lodging that are necessary and in the best interest of the District.

If government or group rates are offered by provider of transportation, such rates must be used when available. If group or government rates are not offered or available, reimbursement shall be limited to round trip standard coach airfare, plus ground transportation or when available, if group or government rates are offered, such rates shall be used.

Reimbursement for use of air, train, rental car, or private car shall be selected on the basis of the most reasonable and appropriate method, taking into consideration distance, time and total costs to the District.

The following types of travel expenditures while on District business are allowable:

i) Travel by Private Automobile – The driver must possess a valid California driver's license and carry automobile insurance. Any damages to the vehicle or service repairs are of a personal nature, and will not be reimbursed by the District.

Mileage reimbursement will be based on the vehicle. Mileage reimbursement shall be at the prevailing IRS established rate. Mileage will not be reimbursed to Directors who receive auto allowances for local travel. Parking may be reimbursed upon presentation of the original receipt. For each incidental expense less than $25, submission of documentation the Finance Committee deems acceptable shall be sufficient for purposes of this section.

If a traveler wishes to drive rather than fly to a destination, he/she may do so. The District will reimburse the lesser of the mileage rate to and from the site or the amount of the airline coach fare.

For local travel, the IRS rate for mileage reimbursement will apply. When traveling either by car or plane outside the area is reasonable, the lesser of mileage or airfare will apply. The amounts reflected on receipts will be reimbursed for business meals while traveling.
ii) **Air Travel** – If government or group rates are offered by the provider of air travel services, such rates must be used when available. If no government or group rates are offered or available, travel shall be in coach class or equivalent service, unless the Board determines some physical problem or exceptional circumstance warrants travel in a higher class.

iii) **Rental Vehicles** – When rental vehicles are used, government or group rates must be used if offered by the provider of rental services and available. If no government or group rate is offered or available, an inexpensive, appropriate vehicle is to be used.

**Travel Budget and Encumbrance of Travel Budget:**

a. **The District will annually budget funds, up to $3,000, for each of the five Directors for travel, including legislative trips to Washington D.C. and to Sacramento, California.**

b. **The District will also budget $7,500 for each Director to cover all other District travel.**

c. **Notwithstanding any other provision of this Code, a Director may travel to any water conference so long as said travel is within the Director’s annual travel budget for items listed in subsection b), above.**

d. **There will be a 10% contingency fund set aside for use at the discretion of the Board President.**

e. **The budget will be adjusted by the change in the consumer price index each year.**

f. **Unused budgeted funds from each Director’s travel budget for items listed in subsections a) and b) above will be encumbered and available for use in the subsequent fiscal year.**

**Unused monies related to the 10% contingency fund in subsection c) above, will be encumbered and added to the subsequent year’s contingency fund available at the discretion of the Board President.**

**The unspent funds related to subsection a), b) and c) are only available for use in the fiscal year immediately following the encumbrance; funds are not cumulative. The carryover of encumbered funds will be used first prior to using any of the Director’s current year’s travel budget.**

fg. **Unspent budgeted funds for items listed in subsections a) and b) above, can be re-allocated to the respective individual Director’s event sponsorship and/or community grant program allocation. However, the**
reallocation must take place during an open session board meeting in a
time coinciding with the Board's annual midyear budget review. Once the
election is made to transfer excess funds from the individual Director's
travel budget to the respective individual Director's event sponsorship or
community grant program budget each year, the re-allocation is
irrevocable. Unspent budgeted funds relating to the 10% contingency as
outlined in subsection c) above are not available for reallocation.
DATE: AUGUST 9, 2010
TO: ADMINISTRATIVE COMMITTEE
FROM: ROBB WHITAKER, GENERAL MANAGER
SUBJECT: PROPOSED ADMINISTRATIVE CODE AMENDMENTS – CHAPTER 12
ELECTRONIC MEDIA/INTERNET POLICY

SUMMARY

On June 20, 2008, the Board of Directors considered changes to the Administrative Code as it relates to electronic media and internet policy. At the meeting, the Board further requested the Administrative Committee to review further the proposed changes and asked that Board members submit their amendments, if any, to District Counsel. There were no comments received by Counsel and the Administrative Committee has not considered the item since that time.

For your consideration and direction, attached is amended Chapter 12 of the Administrative Code, which includes a proposed Email Retention Policy ("Policy").

The Policy applies to emails of District officials, officers, employees, volunteers and contractors. The Policy also clearly identifies the types of emails that constitute public records and those that do not. For instance, the following definition of "public records" has been incorporated in the Policy: “any writing or recording of an event or information, which is kept in the custody of public officer, either because a law requires it to be kept or because it is necessary or convenient to the discharge of the public officer’s duties, and was made or retained for the purpose of preserving its information content for future reference.” (See 64 Cal.Op.Att’y.Gen 317). Permanent District electronic records are subject to disclosure in electronic form in accordance with the California Public Records Act ("CPRA"). Generally, emails that contain substantive information concerning the District’s policies, decision-making, proceedings, projects, or contractors, or that may later be important or useful for carrying out the District’s business should be retained as public records in accordance with the Policy and subject to the District’s Records Retention Policy and Schedule.

Pursuant to the Policy, regardless of the retention requirements, emails and other electronic or paper documents pertaining to threatened or actual legal proceedings must be retained until the litigation is finally concluded.

Additionally, the Policy addresses the storage of emails constituting public records for ongoing or long-term projects. The District may create a local network drive for storage of such emails on personal staff computers. Alternatively, and possibly a better approach, is to require District’s officials, officers, employees and volunteers to print and file such emails in to the appropriate District file. This way, the back-up tapes and the emails stored on the District’s server can be purged as permitted by the Records Retention Policy and Schedule. We have left blank that portion of the Policy pertaining to the storage of permanent District records, pending the Administrative Committee’s direction and recommendation.
Under the Policy, District officials, officers, employees and volunteers are responsible for determining whether emails created, received or used by them should be retained as permanent records within ten (10) working days of creation, receipt or use of the email. Please note that the ten-day time period may be increased or decreased at the Administrative Committee’s direction.

The Policy further provides that because emails and email systems may not be used for permanent storage of District records, the emails are generally deemed to constitute preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the District in the ordinary course of business and that are therefore exempt from disclosure pursuant to the CPRA. Pursuant to the Policy, the District’s General Manager and Chief Financial Officer are responsible for determinations concerning disclosure of District records, including emails, in response to requests pursuant to the CPRA, subpoena or court order and as authorized by the District’s Administrative Code. When a request for disclosure of District records that applies to emails is received, the person responsible for the covered records must, using his/her best efforts and by any lawful means available, preserve any email covered by the request until it is determined whether the email is subject to retention and/or disclosure. The General Manager, Chief Financial Officer, and/or District Counsel must be contacted concerning any request for disclosure of District records that applies to email in the possession of District officials, officers, employees and volunteers.

Finally, the Policy also provides that back-up tapes are only for disaster recovery purpose and that back-up copies performed by Information Technology staff are not records retention. We suggest that back-up tapes should be retained for no more than six (6) months. This time frame may, however, be increased or decreased, at Administrative Committee’s direction and recommendation.

**FISCAL IMPACT**
None.

**STAFF RECOMMENDATION**
For discussion.

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12 ELECTRONIC MEDIA/INTERNET POLICY

This Chapter shall be known as the District's Electronic Media and Internet Policy ("Policy"). The District provides various electronic facilities and technology resources to authorized employees to assist them in the performance of their job duties for the District. Each employee has a responsibility to use these District resources in a manner that increases productivity, enhances the District's public image, and is respectful of other employees. Failure to follow the District's policies regarding the use of these resources may lead to disciplinary measures, up to and including termination of employment.

12.1 Policies Regarding Ownership of Information Stored on Electronic Media

All information, in any format, stored by any means on the District's electronic facilities (Voicemail, Electronic Mail, computer network drives, hard disks or individual diskettes) is the property of the District and subject to inspection whenever the District has reasonable suspicion that an employee has violated this policy or for any legitimate business needs. Under those circumstances, the Board President, General Manager and Assistant General Manager/Chief Financial Officer / Chief Engineer shall have the ability, and reserve the right, to review any electronic media with or without consent. However, no other person has the right to go into any electronic media of another person for any purpose other than legitimate District business.

In addition to reviews of stored material by authorized District employees, users of District resources shall be aware that such material might be retrieved by unauthorized "hackers" who have only curiosity or mischief as a motive. Any District employee caught abusing the District’s electronic media will be held responsible for damages and will be disciplined, and may be up to and including terminated termination.

12.2 Safety and Integrity of Information Imported from Electronic Media

Information received from any source outside the District stored on removable media (such as diskettes or ZIP disks) must be virus-scanned before any files are opened or copied to the District network. Any authorized user of the District resources shall request assistance from Information Systems if they do not know how to do this.

12.3 Policies Regarding Electronic Mail

The official policy of the District is that all electronic mail ("E-mail") messages are treated as District correspondence. E-mail can be accessed by anyone on the network who has your password. Even the use of system passwords does not ensure confidentiality. Passwords are designed for District security, not individual privacy. E-mail should
not be used for non-District business. E-mail messages are not private. E-Mail should never be used to transmit confidential financial or personal information.

a) Any communication by E-mail should be drafted with the same care as a formal memorandum. E-mail messages should not contain informal remarks that might potentially be embarrassing to the District, its employees, or its constituents. Never write anything you do not want forwarded. Your message could end up being read by someone you were not expecting to read it.

b) E-mail messages must never contain offensive, abusive or harassing language. This includes, but is not limited to, the display or transmission of sexually explicit images, cartoons, jokes and messages or any other message that could bring discredit to the District. Employees should also refrain from using information in a way that would be disruptive, offensive, or harmful to morale. For example, the creation, display, or transmission of sexually-explicit images, messages or cartoons, any use of ethnic slurs, racial epithets, or any conduct which violates the District's policy prohibiting discriminatory conduct or harassment is strictly prohibited.

c) The District encourages employees to report if someone is sending you offensive, harassing or sexually explicit e-mail messages — whether it is internal or external e-mail — to the General Manager or the Assistant General Manager/Chief Engineer, or the Manager of Administration Chief Financial Officer. The District has a policy regarding discrimination or harassment of its employees and will not tolerate these actions. There will be no retaliation against an employee who makes any good faith complaint.

d) E-mail should never be used to solicit for charities, schools or personal business.

An eE-mail instruction or request from a constituent, outside contractor, or other business contact is no less important than one in a letter. Therefore, employees should not erase their external eE-mail messages (either incoming or outgoing) until doing the following: Employees should print hard copies of these external (incoming and outgoing) e-mail messages and send them to the appropriate file. Once the copy has been made and forwarded to the file, the e-mail message should be deleted from the system.

12.4 Electronic Mail Retention Policy

This section governs retention of e-mail, or electronic communication, that is created, sent, received, forwarded, edited, stored, or otherwise...
used by means of District electronic information resources of any kind, including, but not limited to, computers, computer networks, software, telephones, voicemail, personal data assistants, and any other electronic data systems or equipment. This policy applies to E-mails of District officials, officers, employees, volunteers and contractors (collectively referred to as "Authorized Users").

Emails may consist of correspondence and other documentation which may constitute District records subject to the requirements of the California Public Records Act ("CPRA"), the District's Records Retention Schedule and the laws and regulations governing it, and other laws and regulations that apply to public agency information.

E-mail and E-mail systems are intended to be a medium of communication. E-mail and E-mail systems are not intended to be and may not be used for the electronic storage or maintenance of permanent District records. Back-up tapes are for disaster recovery purposes only. Retention is the responsibility of the sender of the message, not the back-up process. Back-up copies performed by Information Technology staff are not records retention. Back-up tapes should be retained no more than (suggested retention period: 6 months).

Authorized users are responsible for determining whether E-mails created, received, or used by them should be retained as permanent District public records. The definition of public records is "any writing or recording of an event or information, which is kept in the custody of public officer, either because a law requires it to be kept or because it is necessary or convenient to the discharge of the public officer's duties, and was made or retained for the purpose of preserving its information content for future reference." Typically, E-mails that contain substantive information concerning District policies, decision-making, proceedings, projects, or contractors, or that may later be important or useful for carrying out District business should be retained as permanent District records in accordance with this policy and District's Records Retention Schedule. Such E-Mails must be stored at [Instructions pertaining to storage of permanent electronic records should be inserted here] and deleted. All other E-mails that should be retained as either permanent or non-permanent records pursuant to the Records Retention Policy, should be printed and filed in the corresponding District file and deleted. The General Manager or Chief Financial Officer and District Counsel are available to assist persons subject to this policy in determining which E-mails should be retained as permanent WRD records and
how, and to address other questions concerning the application of this policy.

Regardless of retention requirements, E-mail and other electronic or paper documents pertaining to threatened or actual legal proceedings must be retained until the litigation is finally concluded. Examples of e-mails that are not public records include e-mails from friends or family, and e-mails from one coworker to another inviting him or her to lunch or coffee.

Authorized Users should generally determine whether E-mails created, received or used by them should be retained as permanent City District records within ten (10) working days of creation, receipt or use of the -District E-mail. Because E-mails and e-mail systems may not be used for permanent storage of District records, E-mails are generally deemed pursuant to this policy to constitute preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the District in the ordinary course of business and that are therefore exempt from disclosure pursuant to the CPRA. However, the District’s General Manager and Chief Financial Officer are responsible for determinations concerning disclosure of District records, including E-mails, in response to requests pursuant to the CPRA, subpoena or court order.

Upon request for disclosure of District records that applies to E-mails, Authorized Users responsible for the covered records must, using his/her best efforts and by any lawful means available, preserve any E-mail covered by the request until it is determined whether the E-mail is subject to retention and/or disclosure. The General Manager, Chief Financial Officer, and/or District Counsel must be contacted concerning any request for disclosure of District records that applies to E-mail in the possession of District officials, officers, employees and volunteers.

Authorized Users are responsible for managing E-mail and E-mail systems used by them in accordance with this policy. Authorized Users should regularly review their mailboxes or folders that contain E-mails and delete E-mails that are not required to be kept by law or pursuant to this policy, or that are unnecessary or inconvenient for the discharge of official District duties or the conduct of District business, or that are otherwise no longer needed in accordance with this policy.

42.412.5 Policies Regarding Internet Usage

Use of the Internet is limited to business purposes only. Accessing information for personal use and/or with no business relevance,
including sites that are inconsistent with the District’s ethics and values, could discredit the District, or could lead to embarrassment and possibly legal consequences to the employee and the District, is prohibited. Non-business use also consumes resources, such as employee time and Internet connection bandwidth that could otherwise be used for the benefit of the District.

Where the District has a reasonable suspicion that this policy is being violated by an employee or has legitimate business need, the General Manager and the Assistant General Manager / Chief Engineer Chief Financial Officer reserve the right to record and monitor employee activity on the Internet when such activity takes place using the District’s resources, login ID, and/or from District premises. Any Employee discovered abusing the District’s Internet resources and policy will be held responsible for damages and will be disciplined, up to and including termination.

### 42.612.6 Access to Internet

Each person is responsible and accountable for his or her use of Internet resources. Access will be provided to District employees whom the District determines have a legitimate business need for it.

### 42.612.7 Individual Accountability

Many people use the Internet under the illusion that their actions are private and anonymous. This is not so. Every time you visit a site, you leave a calling card that reveals where you come from, what kind of computer you have, and other details about your identity and viewing habits. Most sites keep logs of all your visits. Remember: All access to the Internet from within the District network, or using the District login ID, is tagged with the District’s name. This will appear in e-mail addresses, interactive sessions, and in other systems’ operational logs — just as if a business card bearing the District logo was being provided when accessing the Internet. Individuals should conduct work on the Internet in accordance with established District ethics, values and business practices as described below, and elsewhere in this Administrative Code.

### 42.712.8 Internet Guidelines

All policies apply to Internet and related services including WWW, FTP, USENET groups, bulletin boards, Internet e-mail etc. Internet use must be consistent with District policies and provide business benefit.

a) The creation and/or usage of e-mail IDs for use while logged on to the Internet with the District login ID is prohibited.

b) The creation and/or receipt of e-mail messages from within any Internet Service Provider (ISP) are prohibited. External e-mail is to be sent from, and external e-mail received, through the District’s e-mail system only.
c) The downloading and usage of software obtained from the Internet is prohibited. Such software could compromise the District's entire computer network.

d) The downloading and usage of document files obtained from the Internet is permitted only if those files are virus-scanned by the user before opening. Request assistance from Information Systems if you do not know how to do this.

e) Files with the filename extension "exe" or "zip" or any file(s) located on an FTP site may not be downloaded by any user except the Assistant General Manager/Chief Engineer/Chief Financial Officer or the Network Administrator.

f) Data and informational integrity should be considered questionable when obtained from the Internet. Care must be taken to ensure the validity of information before using it in District business.

g) Consistent with other District policies and applicable law, the District reserves the right to monitor any Internet communication passing through District facilities.

h) Employees, unless specifically authorized to do so by the General Manager or Assistant General Manager/Chief Engineer/Chief Financial Officer, and only if such practices are validated under applicable law, are prohibited from entering into contractual agreements or making statements that may be interpreted as contractual via any Internet site.

i) All Internet users should be aware of significant security problems that could negatively impact the District. Uncontrolled (i.e. no firewall protection) access allows infected or malicious code (viruses) to be sent to the District's computer network from the Internet and increases risk of unnoticed and unauthorized examination, export, modification, and/or destruction of proprietary information.
MEMORANDUM

ITEM NO. 9

DATE: AUGUST 9, 2010

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: FISCAL YEAR 2010-11 BUDGET REVIEW

SUMMARY

At the June 21, 2010 External Affairs Committee meeting, the Committee Chair asked staff to review other agency budget documents and see how WRD's budget compares. At its July 19, 2010 meeting, staff provided a report to the External Affairs Committee and the Committee Chair requested the item be referred to the Administrative Committee.

Staff will give a report to the Administrative Committee on its analysis and will await further direction from the Committee.

FISCAL IMPACT

None

STAFF RECOMMENDATION

For information.