

## **CHAPTER 6 PROCUREMENT REGULATIONS**

Last Updated: June 19, 2017

### *PREFACE*

*This Chapter of the P&P is intended to be consistent with those portions of the Utah Procurement Code, Utah Code Ann., Title 63G, Chap. 6a (the “Procurement Code”) and the regulations of the Utah Procurement Policy Board (the “Procurement Board”) that apply to the District. These regulations are established pursuant to rulemaking authority granted to local districts in Section 63G-6a-103(1)(h)(ii). Where the Procurement Board has issued regulations on the same subject covered by these District Procurement Regulations, these District Procurement Regulations govern. And, where these District Procurement Regulations establish rules and procedures in addition to those established by the Procurement Board, these District Procurement Regulations, as well as the Procurement Board’s regulations, apply. Any such additional rules and procedures are specifically identified in these District Procurement Regulations.*

*For ease of reference, these Procurement Regulations are organized by Part numbers that correspond to the numbered Parts of the Procurement Code. To the extent practicable the Sections of these Procurement Regulations are numbered the same as the related Procurement Code Section. For example, Section 63G-6a-102 of the Procurement Code describes the purposes of the Procurement Code, and P&P Section 6-102 describes the purposes of this Chapter.*

*All District expenditures must be properly appropriated as described in P&P Chapter 3. Once a District expenditure has been properly appropriated, this Chapter of the P&P describes the manner in which the source for the budgeted purchase is to be selected. Once the source for a properly appropriated purchase has been selected, P&P Chapter 3 describes the manner in which the source for the budgeted purchase is to be approved.*

### **PART 1 GENERAL PROVISIONS**

#### **6-102 PURPOSES**

This Chapter of the P&P is intended to:

- 1) simplify, clarify and modernize the procurement procedures of the District in accordance with the applicable provisions of the Procurement Code, Utah Code Ann. Section 63G-6a-101, et seq., and other applicable law; and

- 2) provide for the fair and equitable treatment of those who deal with the District regarding procurement; and
- 3) foster effective broad-based competition within the free enterprise system to the extent practicable; and
- 4) Consistent with the District's mission to provide high quality water and reliable services in a safe, timely, economical, and environmentally sensitive manner, this Chapter is intended to provide proper value to the District with cost effective goods and services.

### **6-103 DEFINITIONS**

Unless otherwise modified in this section, terms used in these Procurement Regulations shall be defined as described in Section 103 of the Procurement Code. As used in this Chapter:

- 1) "Head of a procurement unit" means the procurement officer.
- 2) "Procurement officer" means the GM or his designee.
- 3) "Protest officer" means a standing committee or ad hoc committee of the Board as determined by the Chair.

### **6-105 APPLICATION**

- 1) Except as otherwise directed by the Board, this Chapter of the P&P, the Procurement Code, and any applicable Procurement Board regulations shall govern the District's purchase of all goods and services.
- 2) This Chapter of the P&P describes the procedure for District procurements. All District procurements shall be properly appropriated as described in P&P Chapter 3. Once an appropriate source has been selected pursuant to this Chapter of the P&P, contracts and expenditures must be authorized consistent with P&P Section 3-642. Any District monies shall be disbursed consistent with P&P Section 3-635.
- 3) This Chapter of the P&P shall be interpreted in a manner consistent with those portions of the Procurement Code and any Procurement Board regulations which apply to the District.
- 4) Nothing in this Chapter of the P&P shall create rights, interests, or causes of action against the District, its Trustees, officers, agents or employees. Failure to follow

procedures as described in this P&P Chapter shall not invalidate the action taken, unless otherwise expressly provided by law.

### **6-107 EXEMPTIONS**

To the extent purchases are exempted from the Procurement Code, they are also exempted from the terms of this Chapter of the P&P.

### **6-111 SPECIFICATIONS**

The procurement officer may set specifications for goods and services as provided in Section 111 of the Procurement Code.

### **6-113 PRICE BASED ON ESTABLISHED TERMS**

The procurement officer may establish the price of procurement items as provided in Section 113 of the Procurement Code.

## **PART 3 PROCUREMENT OFFICER**

### **6-302 PROCUREMENT OFFICER**

As used in this P&P Chapter, “procurement officer” will mean the District’s procurement officer or designee.

### **6-303 DUTIES AND AUTHORITY OF PROCUREMENT OFFICER**

- 1) The procurement officer will:
  - a) supervise the District’s procurement to assure that all District procurements are properly appropriated by the Board pursuant to P&P Chapter 3 and the instructions of the Board;
  - b) supervise the District’s procurement to assure that it is consistent with this Chapter of the P&P, applicable statutes, and any applicable Procurement Board regulations;
  - c) exercise general supervision and control over inventories belonging to the District;
  - d) establish reasonable procedures for the inspection and acceptance of goods and services;

- e) prepare and maintain specifications for goods and services as described in this Chapter of the P&P; and
  - f) recommend periodic updates to this P&P Chapter.
- 2) The procurement officer may take actions to correct a procurement as described in the Procurement Code.
  - 3) Except as otherwise described in this chapter of the P&P, or as otherwise directed by the Board, the procurement officer has the power to act as described in the Procurement Code.

**PART 5**  
**OTHER STANDARD PROCUREMENT PROCESSES**

**6-506 SMALL PURCHASES**

- 1) As used in this section:
  - a) “Annual cumulative threshold” means the maximum total annual amount that the District may expend to obtain procurement items from the same source under this section. The District’s annual cumulative threshold is \$50,000.
  - b) “Individual procurement threshold” means the maximum amount that the District may expend to obtain a procurement item under this section. The District’s individual procurement threshold is \$50,000.
  - c) “Single procurement aggregate threshold” means the maximum total amount that the District may expend to obtain multiple procurement items from one source at one time under this section. The District’s single procurement aggregate threshold is \$50,000.
- 2) The District’s rules governing small purchases include but are not limited to:
  - a) Before making a purchase of \$1,000 or less, the District manager responsible for the purchase shall use means which are reasonable under the circumstances to assure that the District is getting good value and a reasonable price. A purchase of goods or services for more than \$1,000, but not exceeding \$50,000, may be awarded without a competitive process after the solicitation of price quotations from enough prospective vendors to reasonably ensure that the District received a competitive price. Such solicitations may be made electronically, orally, or in writing.

- b) Department managers are authorized to make purchases of goods and services of \$25,000 or less which have been properly appropriated consistent with Chapter 3 of the P&P. Purchases greater than \$25,000 shall be authorized and approved by the procurement officer.
- 3) Expenditures made under this section may not exceed the thresholds established in section 6-506 (1) unless the procurement officer gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- 6) Except as otherwise expressly provided in this section, the District:
- a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
  - b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Standard Procurement Requirements.
- 7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- 8) It is unlawful for a person to intentionally or knowingly divide a procurement into smaller procurements with the intent to make a procurement:
- a) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or
  - b) meet a threshold of the District if, before dividing the procurement, it would not have met the threshold.
- 9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):
- a) making two or more separate purchases;
  - b) dividing an invoice or purchase order into two or more invoices or purchase orders;
  - c) or making smaller purchases over a period of time.

## **6-507 APPROVED VENDOR LIST**

The procurement officer may establish an approved vendor list as provided in Section 507 of the Procurement Code.

## **PART 6 BIDDING**

### **6-607 ACTION WHEN ALL BIDS ARE OVER BUDGET**

If the procurement officer certifies that all accepted bids exceed the unencumbered appropriation and that the lowest responsive and responsible bidder does not exceed the unencumbered appropriation by more than 5%, the procurement officer may take action as provided in Section 607 of the Procurement Code.

### **6-609 MULTIPLE STAGE BIDDING PROCESS**

At the discretion of the procurement officer, the District may use multiple stages as provided in Section 609 of the Procurement Code.

### **6-610 CONTRACTS AWARDED BY REVERSE AUCTION**

At the discretion of the Board, the procurement officer may conduct a bid by reverse auction bidding as provided in Section 610 of the Procurement Code.

## **PART 7 REQUESTS FOR PROPOSALS**

### **6-702 CONTRACTS AWARDED BY REQUEST FOR PROPOSALS**

- 1) Except as otherwise instructed by the Board, a request for proposals process, as provided in Section 702 of the Procurement Code, may be used instead of bidding when it is determined, in writing, that it is appropriate and will provide the best value to the District. This determination will be made by the applicable standing committee or ad hoc committee of the Board.
- 2) Except as otherwise instructed by the Board, requests for proposals are allowed for procurement of goods and services related to Process Control/Supervisory Control and Data Acquisition (PC/S) system instrumentation.

## **6-709.5 PUBLICATION OF AWARD AND SCORES**

The procurement officer shall publish awards and scores as required by Section 709.5 of the Procurement Code.

### **PART 8**

#### **EXCEPTIONS TO PROCUREMENT REQUIREMENTS**

##### **6-802 AWARD OF CONTRACT WITHOUT ENGAGING IN STANDARD PROCUREMENT PROCESS—NOTICE—DUTY TO NEGOTIATE CONTRACT TERMS IN BEST INTEREST OF PROCUREMENT UNIT**

- 1) The procurement officer may award a contract for a procurement item without engaging in a standard procurement process, as provided in Section 802 of the Procurement Code if the Board makes the determination required by Section 802 of the Procurement Code.
- 2) The procurement officer shall give public notice of a procurement under this section as described in Section 6-112 of the Procurement Code, if the cost of the procurement exceeds \$50,000, except where publication is not required as provided in Section 802 of the Procurement Code.

##### **6-803 EMERGENCY PROCUREMENT**

The procurement officer may authorize an emergency procurement without using a standard procurement process as provided in Section 803 of the Procurement Code. The Board shall be promptly notified of the emergency procurement.

### **PART 9**

#### **CANCELLATIONS, REJECTIONS AND DEBARMENT**

##### **6-902 CANCELLATION AND REJECTION OF BIDS AND PROPOSALS**

- 1) The District may cancel or reject any or all invitation for bids, bids, request for proposals, or proposals in whole or in part, as may be specified in the solicitation, when the Board or the procurement officer determines it is in the best interest of the District.

- 2) The reasons for the cancellation or rejection will be a part of the contract file.

#### **6-904 DEBARMENT OR SUSPENSION FROM CONSIDERATION FOR AWARD OF CONTRACTS— CAUSES FOR DEBARMENT—APPEAL**

The procurement officer or the Board may disbar or suspend a person from consideration for award of District contract as provided by Section 904 of the Procurement Code. Any disbarment or suspension by the procurement officer shall be promptly reported to the Board.

### **PART 11 BONDS**

#### **6-1103 BONDS OR SECURITY NECESSARY WHEN CONTRACT AWARDED— WAIVER—ACTION—ATTORNEY FEES**

- 1) When a construction contract is awarded by the District, the contractor to whom the contract is awarded shall deliver the following bonds or security to the District, which shall become binding on the parties upon the execution of the contract:
  - a) a performance bond in an amount equal to 100% of the contract amount, executed by a surety company authorized to do business in Utah, in the District's standard form or as otherwise approved in writing in advance by the procurement officer; and
  - b) a payment bond in an amount equal to 100% of the contract amount, executed by a surety company authorized to do business in Utah, in the District's standard form or as otherwise approved in writing in advance by the procurement officer.
- 2) The procurement officer may waive the requirement for bid, performance, and/or payment bonds for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the District.

#### **6-1105 FORM OF BONDS—EFFECT OF CERTIFIED COPY**

Bid bonds, payment bonds and performance bonds must be cash or surety bonds in the standard District form properly issued by a surety licensed and authorized to issue such bonds in Utah. The procurement officer may approve another form in writing before the bond is due and/or specify a specific form of bonds as part of the solicitation. Any person may obtain from the District a certified copy of a bond upon payment of the cost



of reproduction and postage, if any. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

**PART 12  
CONTRACTS AND CHANGE ORDERS**

**6-1202 CONTRACTS AND CHANGE ORDERS**

The procurement officer may adopt, and amend from time to time, standard District construction contract clauses that comply with the Procurement Code.

**6-1207 CERTIFICATION OF CHANGE ORDER**

- 1) Any construction change order that increases the contract amount may not be made without prior written certification by the District's Treasurer that the funds are properly appropriated consistent with Chapter 3 of the P&P and the instructions of the Board and that the approval of such change order is consistent with Section 3-642 of the P&P. The expenditure for an approved change order shall be made in a manner consistent with Section 3-617 of the P&P.
- 2) Notwithstanding any other provision of this section, and only as it relates to rights of the contractor to be paid, it shall be presumed that this section has been complied with if the contractor reasonably relies on an executed change order.

**PART 13  
GENERAL CONSTRUCTION PROVISIONS**

**6-1302 ALTERNATIVE METHODS OF CONSTRUCTION CONTRACTING  
MANAGEMENT**

- 1) Except for small purchases and except as otherwise described in this Chapter or instructed by the Board, competitively bid, single prime contractor, design-bid-build projects, shall be the construction contract management method used by the District.
- 2) An alternative method of construction contract management may be selected by the Engineering Committee as provided in Section 1302 of the Procurement Code.

**PART 15  
DESIGN PROFESSIONAL SERVICES**

**6-1502.5 REQUEST FOR STATEMENT OF QUALIFICATIONS**

The procurement officer may establish criteria in a request for statement of qualifications by which the qualifications of a design professional will be evaluated as provided by Section 1502.5 of the Procurement Code.

## **PART 16 PROTESTS**

### **6-1601 PROTESTS**

The protest officer of the District is a standing committee or ad hoc committee of the Board as determined by the Chair. Protests will be prosecuted in compliance with the Procurement Code.

## **PART 24 UNLAWFUL CONDUCT AND PENALTIES**

### **6-2401 UNLAWFUL CONDUCT AND PENALTIES**

All Trustees, Officers and employees of the District shall comply with part 24 of the Procurement Code and the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Title 67, Chapter 16. Notwithstanding any provision in those Acts, no Trustee, Officer or staff shall accept, directly or indirectly, an economic benefit, for themselves, any family member, or any entity they have an equity interest in, tantamount to a gift – excepting only an occasional hospitality gift which does not exceed ten dollars (\$10) in value from any person associated with a supplier, or prospective supplier, of goods or services to the District. The annual aggregate value of all hospitality gifts from that person shall not exceed fifty (\$50) dollars in value.

### **6-2405 DISCRETION TO DECLARE CONTRACT VOID**

The District Board or GM may declare a contract to be void and unenforceable for violation of Part 24 of the Procurement Code as described in Section 2405 of the Procurement Code.