

**RESOLUTION NO. 08-07-16**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE KEY LARGO WASTEWATER TREATMENT  
DISTRICT RATIFYING AND ADOPTING A  
PROCUREMENT POLICY *NUNC PRO TUNC*, EFFECTIVE  
MAY 20, 2008**

**WHEREAS**, the Board of Commissioners (“Board”) of the Key Largo Wastewater Treatment District (“District”), at a regularly scheduled meeting on May 20, 2008, adopted a Procurement Policy, a copy of which is attached hereto as Exhibit “A”; and

**WHEREAS**, a copy of the Procurement Policy should have been attached to, and made part of, the May 20, 2008 resolution of the Board, which resolution adopted the aforementioned Procurement Policy; and

**WHEREAS**, the District desires, by this resolution, to correctly reflect the Procurement Policy that was adopted by the Board on May 20, 2008; and

**WHEREAS**, the District desires, by this resolution, to ratify the adoption of the attached Procurement Policy, effective May 20, 2008.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
COMMISSIONERS OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT  
AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and are incorporated into this Resolution by reference.

**Section 2. Effective Date.** The Procurement Policy attached hereto as Exhibit “A” is hereby ratified, approved, and adopted *nunc pro tunc*, effective May 20, 2008.

**Section 3. Authorization of District Officials.** The General Manager and/or his designee(s) and the District General Counsel are authorized to take all actions necessary to implement the terms and conditions of this resolution.

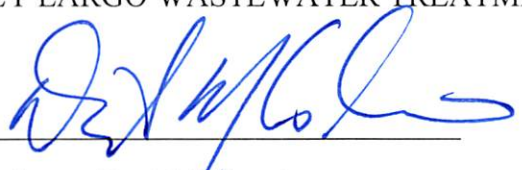
**RESOLVED AND ADOPTED THIS 19th DAY OF JULY, 2016**

The foregoing RESOLUTION was offered by Commissioner Majeska,  
who moved its approval. The motion was seconded by Commissioner Gibbs,  
and being put to a vote, the result was as follows:

	AYE	NAY
Chairman Asdourian	<u>✓</u>	_____
Commissioner Gibbs	<u>✓</u>	_____
Commissioner Higgins	<u>Absent</u>	_____
Commissioner Majeska	<u>✓</u>	_____
Commissioner Tobin	<u>✓</u>	_____


The Chairman thereupon declared Resolution No. 08-07-16 duly passed and adopted the 19th day of July, 2016.


KEY LARGO WASTEWATER TREATMENT DISTRICT

  
 \_\_\_\_\_  
 Chairman David Asdourian

ATTEST:

Approved to as to form and legal sufficiency

  
 \_\_\_\_\_  
 Katherine Jackson, District Clerk

  
 \_\_\_\_\_  
 Ray Giglio, General Counsel



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PROCUREMENT POLICY  
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## I. GENERAL PROVISIONS

### 1-101 Authority for Policy

**1-101.01 Authority of District.** The Key Largo Wastewater Treatment District has the authority to adopt and publish procedures to govern procurement of supplies, services, professional services, and construction. These procedures are based on competitive principles consistent with Section 255.20 Florida Statutes and other Florida law.

### 1-102 Authority of General Manager for Procurement

**1-102.01 Duties.** The duties of the General Manager are as follows:

- (1) to prescribe the time, manner, and form of making requisitions for supplies and services;
- (2) to process requests for procurement;
- (3) to review specifications for accuracy, clarity, and suitability to the procurement;
- (4) to determine which of the procurement methods specified in these guidelines will be followed;
- (5) to procure supplies, services, and professional services needed by the District;
- (6) to exercise general supervision and control over all inventories of supplies and to prescribe the manner in which supplies will be purchased, delivered, inspected, stored, inventoried, marked, and distributed;
- (7) to maintain a property inventory and control system;
- (8) to ensure vendor performance, including enforcement of warranties and guarantees;
- (9) to dispose of excess supplies, or otherwise dispose of surplus, obsolete, or unused supplies and make proper adjustments in accounting;
- (10) to maintain all records pertaining to procurement by the District, including copies of all bid documents, contracts, and amendments;
- (11) to prescribe standard forms for bids and contracts;
- (12) to establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;
- (13) to join with other units of government in cooperative procurement ventures which will serve the best interests of the District;
- (14) to delegate procurement responsibilities to District Staff as the General Manager considers necessary or appropriate;
- (15) under unusual and extenuating circumstances, to waive the application of these guidelines; and

(16) to provide for other matters that the General Manager determines may be necessary to carry out the procurement function.

### **1-103 Facilities Procurement**

**1-103.01 General.** The General Manager is responsible for procurement of construction and leasing of District facilities and related services.

**1-103.02 Duties.** The duties of the General Manager for facilities procurement are as follows:

(1) to review specifications for accuracy, clarity, and suitability to the procurement;

(2) to determine which of the procurement methods specified in these guidelines will be followed for a particular procurement;

(3) to procure services and professional services related to the construction, leasing, and operation of District facilities;

(4) to maintain a building inventory and control system;

(5) to ensure vendor performance, including enforcement of warranties and guarantees;

(6) to maintain all records pertaining to procurement of construction and leasing of District facilities and related services, including copies of all bid documents, contracts, and amendments;

(7) to prescribe standard forms for bids and contracts of construction and leasing of court facilities and related services, as appropriate;

(8) to establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;

(9) to join with other units of government in cooperative procurement ventures which will serve the best interests of the District; and

(10) to provide for other matters that the General Manager determines may be necessary to carry out the procurement of construction and leasing of District facilities and related services.

### **1-104 Ethics in District Procurement**

**1-104.01 Conflict of interest.** No District employee may participate directly or indirectly in a procurement when the employee knows that

(1) the employee or the employee's spouse, child, parent, brother or sister has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee or employee's spouse, child, parent, brother or sister is involved has a financial interest pertaining to the procurement; or

(3) any other person, business, or organization with whom the employee or the employee's spouse, child, parent, brother, or sister is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

**1-104.02 Definitions.** In 1-104

- (1) "participate directly or indirectly" means
  - (A) involvement through decision, approval, disapproval, recommendation, or preparation of any part of a procurement request;
  - (B) influencing the content of any specification or procurement standard;or
  - (C) rendering of advice, investigation, auditing, or participation in any other advisory capacity;
- (2) "financial interest" means
  - (A) ownership or involvement in any property, business or relationship from which the person receives income; or
  - (B) holding a position in a business such as officer, director, trustee, partner, or employee.

**1-104.03 Financial interest in a blind trust.**

(1) If an employee or the employee's spouse, child, parent, brother, or sister holds a financial interest in a blind trust, the employee does not have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the General Manager.

(2) A blind trust is an independently managed trust in which the person has no management rights and in which the person is not given notice of any disposition of the property subject to the trust.

**1-104.04 Discovery of actual or potential conflict of interest, disqualification, and waiver.** Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the General Manager a written statement of disqualification and shall withdraw from further participation in the transaction involved. If the General Manager discovers an actual or potential conflict of interest, the General Manager shall provide the statement of disqualification to the District Board. The District may obtain from the District Counsel an advisory opinion as to what further participation, if any, the employee may have in the transaction.

**1-104.05 Acceptance of gifts, entertainment, and loans.**

(1) A District employee may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the employee's personal or financial interest, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(2) This section does not prohibit

(A) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirements with the District and is based upon a personal or family relationship;

(B) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;

(C) the acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value (under \$25).

(D) The acceptance of in-kind travel or reimbursement of travel expenses where the purpose of the travel is to investigate or evaluate technology, vendor resources, or other things reasonably appropriate to the function of the District.

(E) the acceptance of meals costing less than \$25 when the meals are paid for by a person or firm with whom the District has a contract for services or professional services, when the meals are provided in connection with travel described in 1-104.5(D), above, or in connection with a meeting or discussion of matters reasonably related to the performance of the contract.

(3) Each District employee shall keep and maintain a contemporaneous log showing all meals, entertainment, and travel expenses provided to the employee by a bidder or prospective bidder on a District contract, a contractor or prospective contractor on a District contract, a vendor or prospective vendor of goods or services to the District, and any other person who has, or may have, a financial interest in a decision to be made by the District. In case of doubt as to whether the meals, entertainment, and travel expenses must be entered in the log, the employee shall resolve all doubt in favor of entering the meals, entertainment, and travel expenses in the log. At the end of each calendar month, the employee shall submit the log to the District Clerk, who shall provide a copy to the employee's immediate supervisor and to the General Manager, and who shall maintain the logs in the District central file system.

**1-104.06 Nonessential purchases.** Procurement with District funds is limited to services, supplies, professional services, and construction necessary to the operation of the District. The following items are examples of nonessential purchases that may be procured at District expense only upon the General Manager's written waiver and finding that the procurement is not contrary to the District's best interests, based on written justification from the requestor:

(1) Office Fixtures. Nonfunctional or nonessential office fixtures and equipment.

(2) Membership Dues. The General Manager may approve payment of membership dues by the District only in District-related professional or trade associations and only if the General Manager determines that these memberships directly benefit the District. The District Board may approve membership dues for the General Manager.

**1-104.07 Remedies for breach of ethical standards.** An employee whom the General Manager determines has breached these standards is subject to disciplinary action, including but not limited to oral or written reprimand, suspension, or dismissal.

## **1-105 Exemptions from Procurement Guidelines**

**1-105.01 Other purchases.** These guidelines do not apply to the purchase of books; newspapers; periodicals; audio-visual materials; network information services access; or archival materials.

**1-105.02 Grants.** These guidelines do not apply to grants, or to contracts for supplies or services for research projects funded by money received from the federal government or private grants.

**1-105.03 Professional witnesses.** These guidelines do not apply to contracts for professional witnesses to provide for professional services or testimony relating to existing or probable lawsuits in which the District is or may become a party.

**1-105.04 Advertising.** These guidelines do not apply to procurements of contracts with the media for advertising.

**1-105.05 Real property.** These guidelines do not apply to acquisitions or disposals of real property or interest in real property, except as set forth in this section:

- (1) these guidelines apply to the lease of space for District use; and
- (2) 5-501.09.3 (Lease-Purchase Agreements) applies to the acquisition of real property by lease-purchase agreement.

**1-105.06 Contracts with governmental entities.** Except for 6-601.01 (Intergovernmental procurement), these guidelines do not apply to contracts with the state or its agencies, political subdivisions of the state, instrumentalities of the state, and other governments.

**1-105.07 Disposal of obsolete property.** These guidelines do not apply to the sale, exchange, or disposal of obsolete machinery, equipment, and material no longer needed, required, or useful for construction or maintenance purposes.

**1-105.08 Curatorial and conservation services.** These guidelines do not apply to the purchase of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archeological significance to the District.

**1-105.09 Rates set by law.** These guidelines do not apply to expenditures when rates are set by law or ordinance.

**1-105.10 Travel.** These guidelines do not apply to contracts for travel services, including airplane travel, hotel accommodations, and travel agency services.

**1-105.11 Court-ordered appointments.** These guidelines do not apply to an appointment made by a judicial officer in a judicial proceeding.

**1-105.12 Compliance with terms.** Nothing in these guidelines prevents compliance with the terms and conditions of a grant, gift, bequest, cooperative agreement, or federal assistance agreement.

### **1-106 Public Access to Procurement Information.**

**1-106.01 Inspection.** In accordance with Ch. 119, Fla. Stat., and subject to the limitations provided in Florida Statutes and the Florida Constitution, all procurement



records will be open to the public and will be available for inspection during normal business hours at the District office.

**1-106.02 Limitations on Public Access.** Following is a partial list of limitations on public access to certain District procurement information.

(1) the social security numbers of individual District vendors are exempt from public access and disclosure;

(2) a public record which was prepared by an attorney employed or retained by or on behalf of the District to protect or represent the interests of the District, or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the District, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from public access and disclosure until the conclusion of the litigation or adversarial or administrative proceedings;

(3) sealed bids or proposals received by the District pursuant to invitations to bid or requests for proposals are exempt from public access and disclosure until such time as the District provides notice of a decision or intended decision to act upon the sealed bids or proposals, or until 10 days after bid or proposal opening, whichever is earlier;

(4) certain information relating to the acquisition of property by purchase or through the exercise of the power of eminent domain is exempt from public access and disclosure until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the District,

(5) data processing software obtained by the District under a licensing agreement that prohibits its disclosure is exempt from public access and disclosure;

(6) complaints and other records which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status is exempt from public access and disclosure until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding;

(7) any financial statement that the District requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for any District project is exempt from public access and disclosure;

(8) bank account numbers and debit, charge, and credit card numbers held by the District are exempt from public access and disclosure; and

(9) building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a District wastewater facility are exempt from public access and disclosure.

(10) trade secrets, as defined in Section 812.081(c) Fla. Stat., are exempt from public access and disclosure.

The term "trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is

used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- (A) secret;
- (B) of value;
- (C) for use or in use by the business; and
- (D) of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

## II. PROCUREMENT METHODS

### 2-201 General Provisions

**2-201.01 Procurement methods.** All District procurement shall be conducted consistent with Section 255.20, Florida Statutes, as the same may be amended. The default method of procurement is by competitive sealed bidding under Section 2-202 or 2-203. Where appropriate, the District will use procurement by competitive sealed proposals under Section 2-204. The District will use other procurement methods, as appropriate, under other sections of this Article II.

The District will competitively award to an appropriately licensed contractor each contract for construction or improvement of a public building, structure, or other public construction works that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. The District may use contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by district resolution, or by state law. The District is expressly authorized by Florida Statutes to establish procedures for conducting the bidding process.

The District is not required to follow competitive procurement processes to conduct certain types of contracts, including:

(1) A project undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

(A) An immediate danger to the public health or safety;

(B) Other loss to public or private property which requires emergency government action; or

(C) An interruption of an essential governmental service.

(2) A project for which the District does not receive any responsive bids or responses after public notice in accordance with this Procurement Policy;

(3) A project undertaken to repair or maintain an existing public facility;

(4) A project undertaken exclusively as part of a public educational program;

(5) A project for which the funding source will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent;

(6) A project which was competitively awarded a project to a private sector contractor and which the contractor has abandoned before completion or the local government has terminated the contract; or

(7) A project to be conducted using the District's own services, employees, and equipment, as permitted by law.

**2-201.02 Division of requirements.** Procurement requirements may not be aggregated or structured to circumvent the source selections procedures required by the guidelines.

**2-201.03 Non-discrimination in source selection.** Source selection may not be based on discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

**2-201.04 Exclusion of prospective contractor from competition.** The General Manager may exclude a prospective contractor from submitting a bid or proposal or may reject a prospective contractor's bid or proposal after making a written determination that the prospective contractor assisted in drafting the invitation to bid or request for proposal or gained substantial information regarding the invitation to bid or request for proposal that was not available to the public.

**2-201.05 Lists of contractors.** Except for persons debarred or suspended under 4-402 (Debarment of Vendors from Consideration for Contracts), the District will maintain current lists of persons who provide items or services regularly procured by the District and who desire to provide supplies or services to the District. Inclusion or exclusion of the name of a person does not indicate whether the person is responsible in respect to a particular procurement or otherwise capable of successfully performing a District contract. A person who desires to be on a list shall submit evidence of a compliance with Monroe County business licensing laws. A person who desires to be on a list of construction contractors shall submit evidence of a valid certificate of competency or registration under Ch. 489, Fla. Stat.

**2-201.05.1 Notices.** Solicitation notices may be sent to those listed persons who, in the opinion of the District, are in the business of providing the supplies, services, or construction to be procured. The failure of any person or business to receive notice under this paragraph will not affect the validity of an award.

**2-201.05.2 Failure to respond.** Persons who fail to respond to solicitations after three consecutive procurements of similar items may be removed from the applicable contractors list. They may be reinstated on the list at their request.

**2-201.05.3 Public inspection.** Names and addresses on contractors' lists will be available for public inspection.

**2-201.06 Bid, performance, and payment bonds.**

**2-201.06.1 Bid security.** The District may require submission of a bid bond or other security for the bid and may specify the amount and the form of the bond. If a bond is required, it must be provided by a surety company authorized to do business in the state in an amount equal to at least five percent of the amount of the bid. Other bid security must be in the form of a certified check or similar instrument. A condition of the bond must be that the bidder will enter into a contract with the District if the bidder receives the award.

**2-201.06.2 Performance and payment bonds.** The District may require that any person or business awarded a contract furnish performance and payment bonds, issued by a company authorized to do business in the state. The bonds must be in an amount determined by the District. At a minimum, the bonds must guarantee the full

and faithful performance of all contract obligations and the payment for all labor and materials to be used under the contract.

**2-201.06.3 Construction contracts.** Bid, payment, and performance bonds or other security are required for all construction contracts over \$100,000. The payment and performance bonds must each be in a sum equal to at least one hundred percent of the total amount payable by the terms of the contract.

**2-201.06.4 Solicitation.** Bid security and payment and performance bond requirements must be set out in the solicitation.

**2-201.07 Equal employment opportunity contract compliance.** A bidder's signature on a bid or proposal indicates that the bidder is complying with the applicable portion of the Federal Civil Rights Act of 1964 and the Equal Employment Opportunity Act and the regulations issued under these acts by the State and Federal government. If any bidder fails to comply with these acts or the regulations issued under these acts, the District may terminate the contract.

**2-201.08 Prohibition of procurement from persons headquartered in certain countries.** A prospective contractor that had headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C) is not eligible to participate in a procurement or to be awarded a contract.

## **2-202 Competitive Sealed Bidding.**

**2-202.01 Conditions for use.** Contracts will be awarded by competitive sealed bidding unless otherwise provided in these guidelines.

### **2-202.02 Invitation to bid.**

**2-202.02.1 Use.** The invitation to bid is used to initiate procurement by competitive sealed bidding.

**2-202.02.2 Content.** The invitation to bid must include the following:

(1) instructions to bidders about bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the time for bid acceptance by the District and any other special information;

(2) the purchase or project description, evaluation factors, delivery or performance schedule, and the inspection and acceptance requirements that are not included in the purchase description.

(3) contract terms and conditions, including any warranty and bonding or other security requirements;

(4) a statement that at bid opening the bidder must provide evidence of the bidder's valid business license. A bidder for a construction contract also must provide evidence of the bidder's certification or registration under Ch 489 Fla. Stat.;

(5) a requirement for certification by the bidder of compliance with the applicable portions of 42 U.S.C. §§ 1971, 1975, and 2000 (the Federal Civil Rights Act of 1964); the

Equal Employment Opportunity Act, AS 18.80; and regulations adopted or promulgated under those laws by the federal government and this state, as applicable; and

(6) notification that, by submitting a bid, the bidder certifies under penalty of perjury that the price submitted was independently arrived at without collusion.

**2-202.02.3 Incorporation by reference.** The invitation to bid may incorporate documents by reference by specifying where they can be obtained.

**2-202.02.4 Acknowledgement of amendments.** The invitation to bid shall require the acknowledgment of the receipt of all amendments issued. The District may waive acknowledgment of an amendment if the amendment had only a negligible effect on price, quantity, quality, time, or contractual conditions and can be waived or corrected without prejudice to other bidders.

**2-202.03 Public notice.**

**2-202.03.1 Time of notice.** The District will give adequate public notice of the invitation to bid at least 21 days before the bid opening unless the General Manager determines in writing that a shorter period is advantageous for a particular bid and adequate competition is anticipated.

**2-202.03.2 Publication.** For a procurement that is not a small purchase under 2-206, the notice of an invitation to bid shall be posted on the District website. When practicable, notice may include

- (1) publication in a newspaper calculated to reach prospective bidders;
- (2) notices posted in public places within the area where the work is to be performed or the material furnished; and
- (3) notices mailed to all prospective contractors on the appropriate list maintained under 2-201.05.

**2-202.03.3 Content.** The notice must inform interested persons of the general nature of the procurement and the procedure for submitting a bid.

**2-202.03.4 Other notice.** The District may use additional forms of notice that it finds reasonable to alert as many interested and responsive bidders as is feasible.

**2-202.03.5 Charge for bidding documents.** The District will impose a charge for copies of bidding documents to compensate the District for the costs of public notices and reproduction of the documents.

**2-202.03.6 List of prospective bidders.** The District will maintain a list of all persons who are given an invitation to bid by the office.

**2-202.04 Pre-bid conferences.** Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation to bid. A conference should be held long enough after the invitation to bid has been issued to allow bidders to become familiar with the invitation, but sufficiently before bid opening to allow the prospective bidders to consider the conference results in preparing their bids. Nothing stated at the pre-bid conference may change the invitation to bid. An invitation to bid may be changed only

by an amendment under 2-202.05. On request, the District will supply an audiocassette or written summary of the conference. The District may require the requestor to pay for duplication.

**2-202.05 Amendments to invitations to bid.**

**2-202.05.1 Form.** Amendments to invitations to bid must be identified as such and must require that the bidder acknowledge receipt of all amendments issued. The amendment will reference the portion of the invitation to bid it amends.

**2-202.05.2 Distribution.** Amendments will be sent to all prospective bidders known to have received an invitation to bid.

**2-202.05.3 Timeliness.** Amendments will be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time will be increased to the extent possible in the amendment or, if necessary, by telephone or facsimile and confirmed in the amendment.

**2-202.06 Extension of solicitation.** Before the opening of bids, the time for opening may be extended upon the District's determination that the extension is in the District's best interest. All potential bidders known to have copies of the solicitation will be advised of the extension.

**2-202.07 Pre-opening modification or withdrawal of bids.**

**2-202.07.1 Procedure.** Bids may be modified or withdrawn by written request received in the District before the time and date set for opening. A request must provide authorization for the person making the modification or withdrawal to do so.

**2-202.07.2 Disposition of bid security.** If a bid is withdrawn in accordance with this section, any bid security will be returned to the bidder.

**2-202.07.3 Records.** All documents relating to the modification or withdrawal of bids will be made a part of the appropriate procurement file.

**2-202.08 Late bids, late withdrawals, and late modifications.**

**2-202.08.1 Definition.** Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

**2-202.08.2 Treatment.** Late bids, late withdrawals, and late modifications will be rejected unless the delay was due to an error of the District. The envelopes of late bids, late withdrawals, and late modifications will be labeled with the notation "late bid - rejected" and with the time and date of receipt and will not be opened. A photocopy of the labeled envelope will be retained in the bid file and the original bid envelope will be returned to the bidder.

**2-202.08.3 Notice.** Bidders submitting late bids that will not be considered for award will be so notified as soon as practical.

**2-202.08.4 No action against bidder.** If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security.

**2-202.09 Receipt, opening and recording of bids.**

**2-202.09.1 Submittal.** A bid must be submitted in a single, opaque, sealed envelope with the invitation to bid number identified on the outside of the envelope. Bids must be submitted by mail or in person at the place specified in the invitation to bid, and must be received no later than the time specified in the invitation to bid. Bids not submitted at the proper place or within the time specified will not be opened or considered.

**2-202.09.2 Receipt.** Upon receipt, each bid and modification will be date-stamped and time-stamped and stored in a secure place until the time and date set for bid opening. Bids not submitted at the proper place or within the time specified will not be opened or considered.

**2-202.09.3 Opening and recording.** Bids and modifications will be publicly opened in the presence of at least one witness from the District at the time, date and place designated in the invitation to bid. The name of each bidder, the bid price, and other information that is deemed appropriate by the District will be read aloud or otherwise made available and recorded. This information will be open to public inspection until such time as the District provides notice of a decision or intended decision to act upon the sealed bids or proposals, or until 10 days after bid or proposal opening, whichever is earlier.

**2-202.09.4 Trade secrets.** To the extent the bidder designates and the District concurs, trade secrets contained in a bid document are confidential. Failure to designate material as a trade secret shall be a waiver of trade secret protection for that material. Material so designated must be clearly labeled, and must be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.

**2-202.10 Mistakes in bids.**

**2-202.10.1 General.** To protect the integrity of the competitive bidding process and to assure fairness, the District will carefully consider a request to correct or withdraw a bid because of an inadvertent, nonjudgmental mistake in the bid. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the District or to the fair treatment of other bidders.

**2-202.10.2 Mistakes discovered before bid opening.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in 2-202.07 (Pre-opening modification or withdrawal of bids).

**2-202.10.3 Mistakes discovered after opening but before award.** After bid opening, changes in bid prices or other provisions prejudicial to the interest of the District or fair competition will not be permitted. The following procedures will be



applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening but before award:

(1) Minor informalities. Minor informalities are matters of form rather than substance, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The District shall waive in writing these informalities or allow a bidder to correct them depending on which is in the best interest of the District.

(2) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid will be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors. Unit price is the governing factor if an error is made in extending the unit price.

(3) Mistakes where intended correct bid is not evident. A bidder may be permitted to withdraw a low bid if:

(A) a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(B) the bidder submits proof which clearly and convincingly demonstrates that a mistake was made.

**2-202.10.4 Mistakes discovered after award.** Mistakes may not be corrected after award of the contract except where the District makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

**2-202.10.5 Written determination.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, the District shall prepare a written determination showing that the relief was granted or denied in accordance with these guidelines.

**2-202.10.6 Confirmation of bid.** When the District knows or has reason to conclude that a mistake has been made and the intended correct bid is not clearly evident on the bid document, the office shall ask the bidder to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted.

**2-202.11 Bid acceptance.** Bids will be unconditionally accepted without alteration or correction except as provided above.

**2-202.12 Bid evaluation and award.**

**2-202.12.1 General.** The contract will be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The invitation to bid will set forth the requirements and criteria that will be used to determine the lowest responsive bidder. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable. No bid will be evaluated for any requirement or criteria that are not disclosed in the invitation to bid.

(1) Following the bid opening, the District will evaluate the low bid for responsiveness and responsibility, including examination of the bid for required documents. Once the lowest responsive, responsible bid has been identified, the District will not evaluate any other offers.

(2) The District will review bid compilations to determine whether the low bid is in line with other bidders. If the low bid is less than 75% of the second low bid, the District will request the low bidder to confirm its bid. The bidder shall not be permitted to correct the bid. However, if the bidder satisfies the requirements of 2-202.10.3(3)(B), above, the bidder may withdraw the bid without penalty.

**2-202.12.2 Responsibility and responsiveness.** Responsibility of prospective contractors is covered by 2-213 (Responsibility of Bidders). A responsive bid is defined as a bid that conforms in all material respects to the invitation to bid and which complies with state law.

**2-202.12.3 Product acceptability.**

(1) The invitation to bid will set forth any evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for the following prior to award:

- (A) inspection or testing of a product for such characteristics as quality or workmanship;
- (B) examination of such elements as appearance, finish, taste, or feel; or
- (C) other examinations to determine whether the product conforms to any other purchase description requirements.

(2) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation to bid. A bidder's offering that does not meet acceptability requirements will be rejected as nonresponsive.

**2-202.12.4 Nonresponsive bids.** Bids that do not conform in all material respects to the invitation to bid must be rejected as nonresponsive. Bidders whose bids have been determined to be nonresponsive will be advised in writing of the reasons for rejection at the time the District determines the bid is nonresponsive. A determination that a bid is nonresponsive may be protested under 4-401 (Legal Remedies) of these guidelines.

**2-202.12.5 Rejection for nonresponsibility.** A low bid from a bidder determined not to be responsible will be rejected.

**2-202.12.6 Conditional bids.** A bid that is conditioned upon receiving award of both the particular contract being solicited and another District contract is nonresponsive unless the conditioned bids are specifically authorized in the solicitation.

**2-202.12.7 Alternate bids.** Alternate bids are nonresponsive unless the solicitation states that they may be accepted.

**2-202.12.8 Prompt payment discounts.** Prompt payment discounts will not be considered in determining the low bid but will be taken if earned.

**2-202.12.9 Restrictions.** A bidder submitting a higher quality item than that designated in the invitation to bid will be awarded the contract only if the bidder is also the lowest bidder. This section does not permit negotiations with any bidder.

**2-202.13 Low tie bids.**

**2-202.13.1 Definition.** Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation to bid.

**2-202.13.2 Award.** Low tie bids will be resolved by a random drawing.

**2-202.14 Notice of intent to award.** After selecting the lowest responsive and responsible bidder, the District shall send all bidders a notice of intent to award a contract at least ten calendar days before the formal award of a contract. This requirement does not apply to limited competition, single source, small, innovative, and emergency procurements.

**2-202.14.1 Contents of notice.** The notice will include the name of the successful bidder and a statement of the right to protest the award, including the date by which the protest must be received.

**2-202.14.2 Notice is not formal award.** The notice of intent to award does not constitute a formal award of a contract.

**2-202.15 Documentation of award.** Following award, a record showing the basis for determining the successful bidder must be made a part of the procurement file.

**2-202.16 Subcontractors for construction contracts.**

**2-202.16.1 List of subcontractors.** Within five working days after the issuance of the notice of intent to award for a construction contract, except a design-build construction contract, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid business license, and evidence of each subcontractor's valid certificate of competency or registration under Ch. 489, Fla. Stat.

**2-202.16.2 Replacement of subcontractor.**

(1) With prior approval by the District, a construction contractor or the apparent low bidder may replace a listed subcontractor for a construction contract if the subcontractor

- (A) fails to comply with Ch 489, Fla. Stat.;
- (B) files for bankruptcy or becomes insolvent;
- (C) fails to execute a contract with the construction contractor or bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

- (D) fails to obtain bonding;
- (E) fails to obtain insurance acceptable to the state;
- (F) fails to perform a contract with the construction contractor or bidder involving work for which the subcontractor was listed;
- (G) must be substituted in order for the contractor to satisfy required state or federal affirmative action requirements; or
- (H) is determined by the District not to be a responsible subcontractor.

(2) In addition to the circumstances described in (1) of this section, a construction contractor may request permission from the District to add or replace a listed subcontractor. The request must be in writing, specifically detailing the basis for the request, and include appropriate supporting documentation. The District will approve the request if the District determines in writing that the requested addition or replacement is in the best interest of the District.

### **2-202.16.3 Penalties.**

(1) If a bidder for a construction contract fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.

(2) A bidder for a construction contract who attempts to circumvent the requirements of 2-202.16 by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates 2-202.16.

(3) If a construction contract is awarded to a bidder who violates 2-202.16, the District may

- (A) cancel the contract; or
- (B) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue.

**2-202.16.4 Inapplicability to design-build construction contracts.** The requirements of 2-202.16 do not apply to a design-build construction contract.

### **2-202.17 Bid cancellation.**

**2-202.17.1 Reasons for cancellation.** An invitation to bid may be cancelled before opening, in whole or in part, when the District determines in writing that cancellation is in the best interest of the District for reasons including but not limited to the following:

- (1) the District no longer requires the supplies, services, or construction;
- (2) the District no longer can reasonably expect to fund the procurement;
- (3) proposed amendments to the invitation would be of such magnitude that a new invitation is desirable; or
- (4) the District determines that the solicitation is in violation of law.

**2-202.17.2 Procedures.**

(1) The notice of cancellation will be sent to all persons known to have obtained copies of the invitation to bid.

(2) The notice of cancellation must identify the invitation, briefly explain the reasons for the cancellation, and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or future procurement of similar items or services.

(3) The reasons for the cancellation must be included in the procurement file.

**2-202.18 Rejection of all bids.** All bids may be rejected in whole or in part or the date for opening bids may be delayed when it is in the best interests of the District.

**2-202.18.1 Reasons for rejection.** Reasons for rejection of all bids include but are not limited to the following:

(1) the supplies, services, or construction being procured are no longer required;

(2) ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) the invitation did not provide for consideration of all factors of significance to the District;

(4) prices exceed available money and it would not be appropriate to adjust quantities to accommodate available money;

(5) all otherwise acceptable bids received are for clearly unreasonable prices; or

(6) there is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(7) the award is not in the best interests of the District.

**2-202.18.2 Notification.** If all bids are rejected, all persons or businesses that submitted bids will be notified in writing at the time of the determination of the reasons for rejection of all bids.

**2-202.18.3 Records.** The reasons for rejection will be included in the procurement file and are available for public inspection. If bids or proposals are rejected, the bids or proposals that have been opened must be retained in the procurement file.

**2-202.19 Rejection of individual bids.** Individual bids may be rejected when rejection is in the best interests of the District. The reasons for rejection must be made part of the procurement file.

**2-202.19.1 Reasons for rejection.** Reasons for rejection of an individual bid include but are not limited to the following:

(1) the person who submitted the bid is not responsible;

(2) the bid is nonresponsive;

(3) the service, supply, professional service, or construction item fails to meet the specifications or other acceptability criteria set out in the solicitation; or

(4) the bid fails to meet any goals set out in the solicitation to eliminate and prevent discrimination in state contracting because of race, religion, national origin, sex, age, marital status, pregnancy, parenthood, or handicap.

(5) the bidder did not meet the qualification requirements of 2-202.21.

**2-202.20 Only one bid received.** If only one responsive bid is received in response to an invitation to bid, an award may be made to the single bidder if the District finds that the price submitted is fair and reasonable, that the bidder is responsible, and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. If the bid is rejected

(1) new bids may be solicited;

(2) the proposed procurement may be cancelled; or

(3) if the District determines in writing that the need for the supply or service continues but that the price of the bid is not fair and reasonable and there is no time for resolicitation or it is unlikely that resolicitation would increase the number of bids, the procurement may be conducted as a limited, single source or emergency procurement, as appropriate.

**2-202.21 Qualified bidders.**

(1) Unless provided for otherwise in the solicitation, to qualify as a bidder for award of a contract, a bidder must

(A) add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or

(B) be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the solicitation.

(2) If a bidder leases services or supplies or acts as a broker or agent in providing the services or supplies in order to meet the requirements of (1) of this section, the District may not accept the bidder as a qualified bidder.

**2-203 Multi-Step Sealed Bidding.**

**2-203.01 Definition.** Multi-step sealed bidding is a process consisting of a first phase in which bidders submit unpriced technical offers to be evaluated by the District, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

**2-203.02 Conditions for use.** Multi-step sealed bidding may be used when it is impractical to prepare initially a definitive purchase description suitable for an award based on listed selection criteria. Multi-step sealed bidding may be used when it is considered desirable

(1) to invite and evaluate technical offers to determine whether they fulfill the purchase description requirements;

(2) to conduct discussions for the purpose of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, to obtain supplemental information, permit amendments to technical offers, or to amend the purchase description; and

(3) to invite formal priced bids.

**2-202.03 Pre-bid conferences in multi-step sealed bidding.** The District may hold conferences with all potential bidders before the submission and during the evaluation of unpriced technical offers.

**2-203.04 Procedure for phase one of multi-step sealed bidding.**

**2-203.04.1 Form.** Multi-step sealed bidding begins with issuance of an invitation to bid. In addition to the requirements set forth in 2-202.02 (Invitation to bid), the invitation to bid will state

(1) that unpriced offers are requested;

(2) whether priced bids are to be submitted at the same time as the unpriced technical offer; if they are, priced bids shall be submitted in a single separate sealed opaque envelope;

(3) that it is a two-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(4) the criteria to be used in the evaluation of the unpriced technical offers;

(5) that, to the extent the District deems appropriate, the District may conduct oral or written discussions with bidders submitting unpriced technical offers;

(6) that bidders may designate those portions of the unpriced technical offers which contain trade secrets which are, subject to review by the District, to remain confidential; and

(7) that the item being procured must be furnished generally in accordance with the bidder's accepted technical offer and must meet the requirements of the invitation to bid.

**2-203.04.2 Amendments to the invitation to bid.** After receipt of unpriced technical offers, amendments to the invitation to bid will be distributed only to bidders who submitted unpriced technical offers, and these bidders may submit new unpriced technical offers or amend those submitted. If, in the opinion of the District, a contemplated amendment will significantly change the nature of the procurement, the invitation to bid will be cancelled and a new invitation to bid issued.

**2-203.04.3 Receipt and handling of technical offers.** Technical offers will not be opened publicly but will be opened in front of one or more members of District staff. These offers will not be disclosed to other bidders until the District provides notice of a decision or intended decision to act upon the priced bids, or until 10 days after opening of the priced bids, whichever is earlier. Bidders may request nondisclosure of trade secrets identified in writing.

**2-203.04.4 Evaluation of technical offers.** Evaluation of technical offers must be based solely on criteria set forth in the invitation to bid. The technical offers shall be categorized as

- (1) acceptable;
- (2) potentially acceptable (that is, reasonably susceptible of being made acceptable); or
- (3) unacceptable.

**2-203.04.5 Discussion of technical offers.** The District may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the District will not disclose any information derived from any technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that the bidder's offer is unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the District.

**2-203.04.6 Notice of unacceptable technical offer.** The District will place in the procurement file the written reasons for finding an offer unacceptable. They will be made available to the person or firm submitting the offer and for public inspection. The offeror will not be given an additional opportunity to supplement its technical offer.

**2-203.05 Mistakes during multi-step sealed bidding.** Mistakes may be corrected or bids may be withdrawn during phase one before the determination of acceptability is made. During phase two, mistakes may be corrected or withdrawal permitted only in accordance with 2-202.10 (Mistakes in bids).

#### **2-203.06 Procedure for phase two**

**2-203.06.1 Initiation.** The District may initiate phase two of the procedure if, in the District's opinion, there are enough acceptable technical offers to assure effective price competition in the second phase. If the District finds that there are not enough offers, an amendment to the invitation to bid may be issued, or the bid may be cancelled. Upon the completion of phase one, the District shall either

- (1) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
- (2) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

**2-203.06.2 Conduct.** Phase two will be conducted as any other competitive sealed bid procurement except as specifically set forth in this section:

- (1) no public notice need be given of this invitation to submit priced bids because notice was previously given;
- (2) after award, the technical offer of the successful bidder will be disclosed as follows: the District shall examine written requests for confidentiality for trade secrets in the offers to determine the validity of the requests. If the parties do not agree as to the disclosure of data, the District shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless the bidder protests 4-401 (Legal



Remedies), the offer will be so disclosed. The offer shall be open to public inspection subject to any continuing prohibition of the disclosure of trade secrets; and

(3) technical offers of bidders who are not awarded the contract will not be open to public inspection, unless the District determines in writing that public inspection of the offers is essential to assure confidence in the integrity of the procurement process.

## **2-204 Competitive Sealed Proposals**

### **2-204.01 General discussion.**

(1) Competitive sealed bidding is the preferred method of procurement; however, if it is determined that the use of competitive sealed proposals is more advantageous to the District than competitive sealed bidding, then competitive sealed proposals may be used when authorized as provided in 2-204.02.

(2) The key element in determining whether the use of competitive sealed proposals is advantageous is the need for flexibility. The competitive sealed proposals method differs from competitive sealed bidding in two important ways:

(A) it permits discussions with competing offerors and changes in their proposals including price; and

(B) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

(3) An important difference between competitive sealed proposals and competitive sealed bidding is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal and in prices may be made after proposals are opened. Such changes are not allowed, however, under competitive sealed bidding (except to the extent allowed in the first phase of multi-step sealed bidding). Therefore, unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, competitive sealed bidding is not practical or advantageous.

(4) Another consideration concerns the type of evaluations needed after offers are received. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise, use of competitive sealed proposals is the appropriate procurement method. Similarly, such method is appropriate where the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price are a secondary consideration. Further, where the types of supplies, services, or construction may require the use of comparative, judgmental evaluations to evaluate them adequately, use of competitive sealed proposals is the appropriate method.

**2-204.01.1 When use of competitive sealed proposals is advantageous.** A determination may be made to use competitive sealed proposals if it is determined that it is more advantageous to the District than to use competitive sealed bidding. Factors to be considered in determining whether the use of competitive sealed proposals is more advantageous include:

(1) prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the District; and

(2) if the following factors are desirable in conducting a procurement; then such factors may be used to support a determination that the use of competitive sealed proposals is more advantageous:

- (A) whether the contract needs to be other than a fixed-price type;
- (B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- (C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- (D) whether award may need to be based upon a comparative evaluation as stated in the Request for Proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the District. Quality factors include technical and performance capability and the content of the technical proposal; and
- (E) whether the primary consideration in determining award may not be price.

**2-204.02 Conditions for use.**

(1) When the District determines with particularity in writing that the use of competitive sealed proposals is more advantageous to the District than competitive sealing bidding, it may issue a request for competitive sealed proposals. The basis for this determination must be documented in the procurement file.

(2) The following types of supplies and services, for which the use of competitive sealed proposals is generally more advantageous to the District than competitive sealed bidding, may be procured by competitive sealed proposals without a written determination of advantage:

- (A) professional services;
- (B) supplies and services for the clean up of oil and hazardous substances;
- (C) telephone systems and telephone system maintenance;
- (D) concession contracts;
- (E) leased office space; and
- (F) security services and systems.

**2-204.03 Bid procedures apply.** Unless otherwise specified, procedures for competitive sealed bids also apply to requests for competitive sealed proposals.

**2-204.04 Public notice of competitive sealed proposals.** Public notice will be given by distributing the request for proposals in the same manner as 2-202.03 (Public notice).

**2-204.05 Contents of the request for proposals.**

(1) A request for proposals must be prepared in accordance with 2-202 (Competitive Sealed Bidding) and must include the following:

- (A) the date, time, and place for delivering proposals;
- (B) a specific description of the construction, supplies, services, or professional services to be provided under the contract;
- (C) the terms under which the items or services are to be provided;
- (D) a requirement that the offeror submit evidence of the offeror's valid business license at the time designated for opening of the proposals;
- (E) if the contract is for construction, a requirement that, no later than five working days after notice of intent to award, the offeror must submit a list of subcontractors the offeror proposes to use in performance of the contract. The list must include the name and location of the place of business for each subcontractor, the work to be subcontracted to each subcontractor, evidence of each subcontractor's valid business license, and evidence of each subcontractor's valid certificate of competency or registration under Ch. 489, Fla. Stat.
- (F) a list of information which the offeror must submit with a proposal;
- (G) clear references to any document incorporated by reference into the request for proposals;
- (H) a description of all of the factors that will be considered in evaluating the proposals received, including the relative importance of price and other evaluation factors; and
- (I) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but a proposal may be accepted without such discussions.

(2) A request for proposals to provide construction in accordance with a design provided by the offeror must require that each proposal submitted contain a single price that includes the design/build.

**2-204.06 Correction, modification, or withdrawal of proposals.** A proposal may be corrected, modified, or withdrawn before the time and date set for receipt of proposals in accordance with 2-202.07 (Pre-opening modification or withdrawal of bids).

**2-204.07 Pre-proposal conferences.** Pre-proposal conferences may be conducted in accordance with 2-202.04 (Pre-bid conferences). They should be held prior to submission of initial proposals.

**2-204.08 Amendments to requests for proposals.**

(1) Prior to submission of proposals, amendments to requests for proposals may be made in accordance with 2-202.05 (Amendments to invitations to bid).

(2) If, after submission of proposals, there is a need for any substantial clarification of or material change in the request for proposals, the request must be

amended to incorporate the clarification or change, and a date and time established by the District for receipt of new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

**2-204.09 Late proposals, late corrections, late modifications, and late withdrawals.** Unless otherwise provided in the request for proposals, a proposal, correction, modification, or withdrawal received after the date set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of the District.

**2-204.10 Receipt and registration of proposals.** Proposals, modifications, and corrections will have the date and time of receipt noted on the envelope upon receipt, and will be held in a secure place. After the date set for receipt of proposals, the District will prepare a register of proposals, including the name of each offeror and a description of the supply, service, or construction item offered.

**2-204.11 Opening of proposals.**

(1) Proposals will be opened so as to avoid disclosure of the contents to competing offerors before the proposal becomes subject to public access and disclosure.

(2) If a solicitation is cancelled after proposals are received but before a notice of intent to award a contract has been issued, a protest of the solicitation or of the cancellation of the solicitation has not been filed by an interested party, and the time specified for filing such a protest has expired, the District may return a proposal to the offeror that made the proposal. A list of returned proposals shall be kept in the procurement file.

**2-204.12 Evaluation of proposals.**

**2-204.12.1 Evaluation Panel.** A panel designated by the General Manager will evaluate the proposal. Each member shall independently review the proposal and submit his or her evaluation to the General Manager, who shall prepare the final evaluation based on the evaluations of the various panel members. The General Manager has the discretion to give differing weights to the evaluations of the various panel members.

**2-204.12.2 Evaluation factors.** The evaluation will be based on the evaluation factors set out in the request for proposals. Factors not specified in the request for proposals will not be considered. Numerical rating systems may be used but are not required. If they are used, the weighing value or numerical system to be applied to each factor must be set out in the request for proposals. If a numerical rating system is not used, each panel member shall document his or her ranking determination in writing.

**2-204.12.3 Cost, bidder preferences, and cost formula.**

(1) Cost must be an evaluation factor unless professional, architectural, engineering or land surveying services are sought.

(2) The proposal with the lowest cost must receive the highest available rating allocated to cost. A proposal that has a higher cost than the next lowest must receive a lower rating for cost.

(3) The following are some additional evaluation factors that may be considered:

(A) the offeror's experience in Florida and Monroe County performing work similar to that sought in the request for proposals;

(B) the percentage of work that will be performed in Florida and Monroe County;

(C) the location of the office of the offeror where the work will be performed;

(D) The offeror's past performance, including conformance to specifications and standards of good workmanship, forecasting and containment of costs or prices, history of reasonable and cooperative behavior and overall concern for the interests of the customer, and adherence to contract schedules.

**2-204.12.4 Selection.** The evaluation committee will select the proposal most advantageous to the District.

**2-204.12.5 Written record.** The General Manager or designee shall enter into the procurement file a written record of the basis on which the selection was found to be most advantageous to the District.

**2-204.12.6 Proposals from debarred offerors.** A proposal from an offeror debarred under 4-402 (Debarment of Vendors from Consideration for Contracts) must be rejected.

**2-204.13 Only one responsive proposal received.** If only one responsive and responsible proposal is received in response to a request for proposals, the District may award the contract to the offeror, may reject the proposal or may reject the proposal and resolicit proposals.

**2-204.14 Proposal discussions with individual offerors.**

**2-204.14.1 Classifying proposals.**

(1) For the purpose of conducting discussions, proposals shall be initially classified as

(A) acceptable;

(B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(C) unacceptable.

(2) Offerors whose proposals are unacceptable shall be so notified in writing promptly.

**2-202.14.2 "Offerors" defined.** For the purposes of this section of the Procurement Guidelines, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted unacceptable proposals.

**2-204.14.3 Purposes of discussions.** Discussions are held to

- (1) promote understanding of the District's requirements and the offerors' proposals; and
- (2) facilitate arriving at a contract that will be most advantageous to the District taking into consideration price, as applicable, and other evaluation factors set forth in the request for proposals.

**2-204.14.4 Conduct of discussions.** In its discretion, the General Manager or designee may conduct discussions with offerors. Offerors will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. The District may limit discussions to specific sections of the request for proposals. If during discussions there is a need for any substantial clarification of or change in the request for proposals, the request must be amended to incorporate the clarification or change. Auction techniques that reveal one offeror's price to another, and disclosure of any information derived from competing proposals, are prohibited. Any oral modification of a proposal must be confirmed in writing by the offeror.

**2-204.14.5 Evaluation adjustments.** The General Manager's evaluation of a proposal may be adjusted as a result of a discussion under this section. The conditions, terms, or price of the proposed contract may be altered or otherwise changed during the course of the discussions.

**2-204.14.6 Best and final proposals.** After discussions, the District may set a date and time for the submission of best and final proposals. These proposals may be submitted only once unless the District determines in writing that it is in the District's best interest to conduct additional discussions or change the requirements and require another submission of best and final proposals. Otherwise, no discussion of or changes in the best and final proposals may be allowed before the award. If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediately previous proposal is considered the offeror's best and final proposal.

**2-204.14.7 Final evaluations.** After best and final proposals are received, final evaluations will be conducted as described in 2-204.12 (Evaluation of Proposals).

**2-204.14.8 Memorandum of evaluation.** At the conclusion of evaluation resulting in the award of the contract, the General Manager or designee will prepare a memorandum setting forth how the evaluation factors stated in the request for proposals were applied to determine the most advantageous proposal.

**2-204.15 Mistakes in proposals.**

**2-204.15.1 Pre-opening modification or withdrawal of proposals.** Proposals may be modified or withdrawn as provided in 2-202.07 (Pre-opening modification or withdrawal of bids).

**2-204.15.2 Confirmation of proposal.** When the District knows or has reason to conclude before award that a mistake has been made, it should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in 2-204.15.1 and 2-204.15.3 are met.

**2-204.15.3 Mistakes discovered after receipt of proposals.** The procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award are as follows:

(1) During discussions; prior to best and final offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(2) Minor informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding, 2-202.10 (Mistakes in bids).

(3) Correction of mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

(A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

(B) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

(4) Withdrawal of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if

(A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;

(B) the offeror submits proof which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

(C) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

**2-204.15.4 Mistakes discovered after award.** Mistakes shall not be corrected after award of the contract except where the District finds it would be unconscionable not to allow the mistake to be corrected.

**2-204.15.5 Determinations required.** When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination will be prepared by the District showing that relief was granted or denied in accordance with these guidelines. The determination will be placed in the procurement file.

**2-204.16 Negotiation and award of contract.**

**2-204.16.1 Contract negotiations.** After evaluation of proposals under 2-204.12, the District will, in its discretion, negotiate with the offeror of the highest ranked

proposal for the purpose of obtaining contract terms consistent with the solicitation and with terms favorable to the District. If changes are made to the proposal during contract negotiations, the changes must be reasonable; however, the changes may not have the effect of changing the ranking of the highest ranked proposal. If the District determines that the offeror of the highest ranked proposal fails to negotiate in good faith or fails to negotiate within the time period set by the District, the District may terminate negotiations and begin contract negotiations with the offeror of the next highest ranked proposal.

**2-204.16.2 Award.**

(1) The District shall make a written determination showing the basis on which the award was found to be most advantageous to the District based on the factors set forth in the request for proposals.

(2) Notice of Intent to Award shall be issued in accordance with 2-202.14.

**2-204.16.3 Contract execution.** A contract awarded under this procedure must contain

(1) a statement of the amount of the contract;

(2) the date for the supplies to be delivered or the dates for services, construction, or professional services to begin and be completed;

(3) a description of the supplies, services, construction, or professional services to be provided; and

(4) certification by the Finance Officer or a designee that sufficient money is available and budgeted for the amount of the contract.

**2-204.16.4 Failure to negotiate contract.** Upon failure to negotiate a contract with the best qualified offeror, the District may either

(1) select the next most qualified offeror from remaining proposals. If negotiations again fail, negotiations will be terminated and commenced with the next most qualified offeror; or

(2) reject all offers.

**2-204.17 Multi-step sealed proposals.** When it is considered impractical to initially prepare a definitive purchase description to support an award based on listed selection criteria, the District may issue an expression of interest requesting the submission of unpriced technical offers, and then later issue a request for proposals limited to the offerors whose offers are determined to be technically qualified under the criteria set out in the expression of interest. Procedures for multi-step sealed bidding also apply to multi-step sealed proposals.

**2-205 Limited Competition Procurements**

**2-205.01 Conditions for use.** Contracts for the construction of projects and for any other purpose of the District may be awarded in a manner that will best promote free and open competition, including advertisement for competitive bids; however, if the District Board determines that the purposes of the District will be more effectively served



thereby, the District may award or cause to be awarded contracts for the construction of any project, including design-build contracts, or any part thereof, or for any other purpose of the District upon a negotiated basis as determined by the District. The authority to make this determination may not be delegated.. If a procurement method other than competitive proposals or bidding is desired, District staff shall prepare a written justification for use of that procurement method for approval by the General Manager or the District Board, as appropriate. Single source procurements and architectural, engineering and land survey contracts may not be made under this section.

**2-205.02 Public notice.** The District may advertise its intent to make a limited competition procurement for the purpose of determining available and interested procurement sources.

### **2-206 Small Purchases**

**2-206.01 Definition.** Small purchases are supplies, services, construction, and professional services with an estimated dollar value of \$50,000 or less.

#### **2-206.02 Procedures for small purchases up to \$10,000.**

(1) the General Manager shall use reasonable and adequate procedures and make records that facilitate auditing.

(2) "reasonable and adequate procedures" means procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition. In some circumstances, reasonable and adequate procedures may mean contacting only one potential offeror.

**2-206.03 Procedure for procurement of more than \$10,000, but no more than \$50,000.**

(1) Except for procurements under 2-206.02, the District shall use the following procedures in the procurement of supplies, services, professional services, or construction estimated to cost more than \$10,000, but no more than \$50,000:

(A) for the solicitation,

1. at least three firms or persons shall be contacted for a quotation or informal proposal and the District shall designate whether the response may be made in writing or verbally; and

2. the solicitation may be made verbally or in writing and shall include the specifications, the award criteria, and the date and time responses are due;

(B) for the award, the District shall make the award

1. in accordance with the specifications and award criteria in the solicitation, and

2. to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the District.

- (C) as part of the file on the procurement, the District shall include the
1. name of the person who made the solicitation and the date of the solicitation;
  2. information provided by the District under (1)(A) of this section;
  3. names of the firms or persons contacted, a summary of any verbal responses, and copies of all quotations or informal proposals received; and
  4. justification for the award.

(2) If it is determined in writing by the General Manager that the procedures specified in (1) are not practicable under the circumstances, the procedures required by 2-206.02 shall be followed.

**2-206.04. Division of Requirements.** Procurement requirements may not be artificially divided or fragmented so as to constitute a small purchase under 2-206 or to circumvent the source selections procedures required by 2-202 (Competitive Sealed Bidding), 2-203 (Multi-Step Sealed Bidding), 2-204 (Competitive Sealed Proposals), or 2-210 (Professional Services).

**2-206.05. Electronic media.** Nothing in this section prevents postings in electronic media to satisfy the competitive solicitation and notice of award requirements. Quotes and informal proposals may be submitted in electronic media when permitted by the District.

**2-206.06 Established catalog prices.** When seeking verbal quotations, the use of established catalog prices or published discounts from established catalog prices may be used in place of direct contact with a vendor. "Established catalog prices" means the price included in an up-to-date catalog, price list, schedule, or other form that

- (1) is regularly maintained by a manufacturer or vendor;
- (2) is either published or otherwise available for inspection by customers; and
- (3) states prices at which sales are currently or were last made to a significant number of a category of buyers or buyers constituting the general buying public.

## **2-207 Single Source Procurement**

### **2-207.01 Conditions for use.**

(1) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition when the District Board determines that

(A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or limited competition; or

(B) award of the contract under this section is in best interest of the District.

(2) The General Manager must submit written evidence to support a request for single source procurement.

(3) The following are examples of circumstances in which single source procurement may be appropriate:

(A) if the compatibility of equipment, accessories or replacement parts is the paramount consideration;

(B) if a single supplier's item is needed for trial use or testing;

(C) if a single supplier's item is to be procured for resale;

(D) if there exists a single source of expertise required to perform a specific professional service;

(E) if the procurement is for the services of legal counsel for the purpose of advising or representing the District in specific civil or criminal proceedings or on specific matters before federal or state regulatory agencies, boards, or commissions;

(F) if the procurement is for labor negotiation;

(G) if the procurement is for information technology and the compatibility with existing hardware, software, services or supporting infrastructure is a major consideration; or

(H) If a recent competitive procurement for similar goods or services indicates that it is unlikely that competitive procedures would yield a result as favorable to the District as a negotiated contract.

(4) A determination by the District that a specific course of action is or is not "in the District's best interest" under this section means a determination that is reasonable under the circumstances and is neither arbitrary, capricious, nor prompted by corruption. The District's best interest may include the District's interest in receiving goods or services from a responsible offeror at the lowest price. A request to employ the single source procurement method under this section that is based on a determination that it is "in the District's best interest" shall cite the specific and significant interest to support use of the single source procurement method.

(5) In this section, "information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.

**2-207.02 Negotiation.** The District shall negotiate, to the extent practical, to obtain a contract advantageous to the District.

**2-207.03 Record.** The record of a single source procurement must include

(1) the supplier's name;

(2) the amount and type of contract; and

(3) a listing of supplies, services or construction procured.

## **2-208 Emergency Procurement**

**2-208.01 Definition of emergency conditions.** Emergency conditions are sudden unexpected turns of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, resulting in any of the following conditions:

- (1) equipment failure, if the need for timely repair is essential;
- (2) a need to protect public or private property; or
- (3) a situation in which, due to exigent circumstances, procurement through competitive sealed bidding or competitive sealed proposals is impractical or contrary to the public interest.

**2-208.02 Scope of emergency procurement.** Emergency procurement is limited to the services, supplies, professional services, or construction necessary to meet the emergency.

**2-208.03 Procurement methods.** The procedure used will be selected to assure that the required supplies, services or construction items are procured in time to meet the emergency. An emergency procurement may be made by any reasonable means, using competition that is practicable under the circumstances. AS 36.30.310, 2 AAC 12.450.

**2-208.04 Authority.** The General Manager has the authority to make emergency procurements under 2-208.01. The authority to make emergency procurements under 2-208.01(1), (2) and (3) may be delegated.

### **2-208.05 Determination and record of emergency procurement.**

#### **2-208.05.1 Determination.**

(1) The General Manager shall make a written determination, including findings of fact that state the basis for an emergency procurement, for the selection of the procurement method, and for the selection of the particular contractor.

(2) The General Manager may delegate to a responsible official the authority to make a determination of emergency under 2-208.01(1), (2), or (3) under the following circumstances:

(A) if immediate action is necessary to protect public health, welfare, or safety, or to protect public or private property; and

(B) if insufficient time exists

1. to provide the explanation and evidence required under (a) of this section; and

2. for the General Manager to make the written determination of emergency required under (a) of this section.

**2-208.05.2 Record.** A record of each emergency procurement shall be made as soon as practical after the procurement and shall include

- (1) the contractor's name;
- (2) the amount and type of the contract;

- (3) a listing of the supplies, services, or construction procured under the contract;
- (4) identification of the contract file; and
- (5) the written determination.

## **2-209 Reserved**

### **2-210 Professional Services**

**2-210.01 Definition.** The term "professional services" means legal, technical, advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience. Special provisions in 2-210.05 below apply to procurement of design professional services.

**2-210.02 Applicable procedures for contracts of \$10,000 and below.** The District may procure professional services with an estimated value of \$10,000 and below using the procedures in 2-206 (Small Purchases).

**2-210.03 Applicable procedures for contracts over \$10,000.** Procedures for competitive sealed proposals apply to the procurement of professional services with an estimated value over \$10,000.

**2-210.03.1 Contents of requests for proposals.** The request for proposals shall contain at least the following information:

- (1) the type of service required;
- (2) a description of the work involved;
- (3) an estimate of when and for how long the services will be required;
- (4) the type of contract to be used;
- (5) a date by which proposals for the performance of the services must be submitted;
- (6) a statement that the proposals must be in writing;
- (7) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;
- (8) a statement of the minimum information that the proposal must contain, to include:
  - (A) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
  - (B) if deemed relevant by the procurement officer, the age of offeror's business and average number of employees over a previous period of time, as specified in the request for proposals;

(C) the abilities, qualifications and experience of all persons who would be assigned to provide the required services;

(D) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the request for proposals;

(E) past performance as reflected by the evaluations of others who have retained the services of the firm or persons with respect to such factors as control of costs, quality of work and ability to meet deadlines;

(F) a plan giving as much detail as is practical explaining how the services will be performed; and

(G) the factors to be used in the evaluation and selection process and their relative importance.

#### **2-210.03.2 Evaluation.**

(1) Proposals will be evaluated only on the basis of evaluation factors stated in the request for proposals. The minimum factors are

(A) the plan for performing the required services;

(B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services and the qualifications and abilities of personnel proposed to be assigned to perform the services;

(C) the equipment and facilities to perform the services which will be available at the time of contracting;

(D) a record of past performance of similar work.

(2) The relative importance of the factors in (1) and other factors will vary according to the type of services being procured.

**2-210.03.3 Pre-proposal conferences.** Pre-proposal conferences, as appropriate, may be conducted in accordance with 2-202.04 (Pre-bid conferences.) A conference may be held anytime prior to the date established for submission of proposals.

**2-210.03.4 Receipt and handling of proposals.** Proposals shall be handled as follows:

(1) Registration. Proposals and modifications shall be date-stamped and time-stamped upon receipt and held in a secure place until the established due date. Proposals will not be opened publicly nor disclosed to unauthorized persons, but will be opened in the presence of two or more District personnel. A Register of Proposals will be established which will include for all proposals the name of each offeror, the number of modifications received from each offeror and a description of the services offered. The Register of Proposals will be open to public. Proposals of offerors are exempt from public access and disclosure until such time as the District provides notice of a decision or

intended decision to act upon the sealed bids or proposals, or until 10 days after bid or proposal opening, whichever is earlier

(2) Requests for nondisclosure of data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets so identified, the District shall examine the request to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the District shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal or protests under 4-401 (Legal Remedies) of these guidelines, the proposal will be so disclosed.

**2-210.03.5 Discussions.** Discussions may be held as follows:

(1) Discussions permissible. The District shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of the discussions will be to:

- (A) determine in greater detail the offeror's qualifications; and
- (B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance and the relative utility of alternative methods of approach.

(2) No disclosure of information. Discussions must not disclose any information derived from proposals submitted by other offerors.

**2-210.03.6 Modification or withdrawal of proposals.** Proposals may be modified or withdrawn at any time prior to initial selection of best qualified offerors.

**2-210.03.7 Selection of the best qualified offerors.** After conclusion of validation of qualifications, evaluation and discussion as provided in 2-210.03.6, the District shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

**2-210.03.8 Negotiation and award of contract.** Negotiation and award of contract shall be handled as follows:

(1) General. The District shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

(2) Elements of negotiation. Contract negotiations shall be directed toward:

(A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

(3) Successful negotiation of contract with best qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(4) Failure to negotiate contract with the best qualified offeror.

(A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file and the District must advise such offeror of the termination of negotiations which will be confirmed by written notice within three days.

(B) Upon failure to negotiate a contract with the best qualified offeror, the District may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and commenced with the next most qualified offeror.

(5) Failure to negotiate contract with offerors initially selected as best qualified. If the District is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking, and negotiations may continue.

(6) Memorandum of evaluation and negotiation.

(A) At the conclusion of negotiations resulting in the award of the contract, the District shall prepare a memorandum setting forth the basis of award including:

1. how the evaluation factors stated in the request for proposals were applied to determine the best qualified offerors; and
2. the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

(B) All memoranda shall be included in the procurement file and be available to the public on request.

**2-210.03.9 Notice of intent to award.** The District shall notify all offerors in writing of the intent to award. The notice of intent to award is available to the public on request.

**2-210.04 Legal services.** Contracts for the services of legal counsel may incorporate clauses for adjustments in prices, times of performance, and total dollar amount.



**2-210.05 Procurement of design professional services.** Procurement of design professional services shall be conducted in the manner provided below.

**2-210.05.1 Definitions.**

"Continuing contract" is a contract for professional services entered into in accordance with all the procedures of this section between the District and a firm whereby:

- (1) the firm provides professional services to the District for projects in which construction costs do not exceed \$1 million,
- (2) for study activity when the fee for such professional service does not exceed \$50,000, or
- (3) for work of a specified nature as outlined in the contract required by the District, with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

"Design criteria package" means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to the District's request for proposal, or to permit the District to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

"Design criteria professional" means a firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the District for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

"Design professional services " means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

"Project" means that fixed capital outlay study or planning activity described in the public notice of the District under paragraph 2-210.05.2. A project may include:

- (1) a grouping of minor construction, rehabilitation, or renovation activities.
- (2) a grouping of substantially similar construction, rehabilitation, or renovation activities.

### **2-210.05.2 Public announcement and qualification procedures.**

(1) The District will publicly announce, in a uniform and consistent manner, each occasion when design professional services must be purchased for a project the basic construction cost of which is estimated by the District to exceed \$250,000 or for a planning or study activity when the fee for design professional services exceeds \$25,000, except in cases of valid public emergencies certified by the General Manager. The public notice must include a general description of the project and must indicate how interested design professionals may apply for consideration. The District shall provide a good faith estimate in determining whether the proposed activity meets the threshold amounts referred to in the preceding paragraph.

(2) The District shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the District to submit annually statements of qualifications and performance data.

(3) Any firm or individual desiring to provide professional services to the District must first be certified by the District as qualified pursuant to law and the regulations of the District. The District must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(4) The District shall evaluate professional services, including capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985, and other factors determined by the District to be applicable to its particular requirements. When securing professional services, the District must endeavor to meet the minority business enterprise procurement goals under Section 287.09451, Fla. Stat.

(5) The public must not be excluded from the proceedings under this section.

### **2-210.05.3 Competitive selection.**

(1) For each proposed project, the District shall evaluate current statements of qualifications and performance data on file with the District, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(2) The District shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the District shall consider such factors as:

- (A) the ability of professional personnel;
- (B) whether a firm is a certified minority business enterprise;
- (C) past performance;
- (D) willingness to meet time and budget requirements;
- (E) location;

(F) recent, current, and projected workloads of the firms; and

(G) the volume of work previously awarded to each firm by the District, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The District may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under 2-201.05.4.

(3) This section does not apply to a professional service contract for a project the basic construction cost of which is estimated by the District to be not in excess of \$250,000 or for a planning or study activity when the fee for professional services is not in excess of \$25,000. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, the District shall reject all proposals and reinitiate the procurement pursuant to this subsection.

(4) (d) Nothing in this section shall be construed to prohibit a continuing contract between a firm and the District

#### **2-210.05.4 Competitive negotiation.**

(1) The District will negotiate a contract with the most qualified firm for design professional services at compensation which the District determines is fair, competitive, and reasonable. In making such determination, the District will conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over \$150,000, the District will require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any design professional service contract under which such a certificate is required will contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the District determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments will be made within 1 year following the end of the contract.

(2) Should the District be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the District determines to be fair, competitive, and reasonable, negotiations with that firm will be formally terminated. The District will then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the District will terminate negotiations. The District will then undertake negotiations with the third most qualified firm.

(3) Should the District be unable to negotiate a satisfactory contract with any of the selected firms, the District shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

### **2-210.05.5 Prohibition against contingent fees.**

(1) Each contract entered into by the District for design professional services will contain a prohibition against contingent fees as follows:

"The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement."

For the breach or violation of this provision, the District shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor and mapper, who offers, agrees, or contracts to solicit or secure District contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in Section 775.082 or Section 775.083, Fla. Stat.

(3) Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any District contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Section 775.082 or Section 775.083, Fla. Stat.

(4) Any District official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the District and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Section 775.082 or Section 775.083, Fla. Stat.

### **2-210.05.6 Applicability to design-build procurements.**

(1) Except as provided herein, this section is not applicable to the procurement of design-build contracts by the District, and the District will award design-

build contracts in accordance with this section and the procurement guidelines applicable to sealed competitive proposals.

(2) The design criteria package will be prepared and sealed by a design criteria professional employed by or retained by the District. If the District elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional will be selected and contracted with under the requirements of 2-210.05.3 and 2-210.05.4. A design criteria professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package.

(3) The District will select design-build firms based on a qualifications-based selection. During the selection of the design-build firm the District will employ or retain a licensed design professional appropriate to the project to serve as the District's representative. Procedures for the use of a competitive proposal selection process include as a minimum the following:

(A) The preparation of a design criteria package for the design and construction of the public construction project.

(B) The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.

(C) The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.

(D) The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

(E) For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the District of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

(F) In the case of public emergencies, for the District General Manager to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

## **2-211 Contracts Awarded by other government agencies**

**2-211.01 Purchases by District.** The District may procure any item from vendors to other government agencies. If there is only one contractor for the item, the procurement will be made directly without a bid. If there is more than one contractor, the District will develop selection criteria and will select the contractor who offers the item that is most advantageous to the District based on the criteria.

**2-211.02 Purchases through General Services Administration.** Notwithstanding any other provision of these guidelines, purchasing through the

General Services Administration or from federal supply schedules of the General Services Administration may be made without competitive sealed bidding, competitive sealed proposals, or other competition, so long as the purchasing is from persons located in the state and as provided under 41 U.S.C. 251 -- 266.

## **2-212 Reserved**

### **2-213 Responsibility of Bidders**

**2-213.01 Definition.** A bid may be awarded only to a responsible bidder. A responsible bidder has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.

**2-213.02 Standards of responsibility.** Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:

(1) available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the bidder's capability to meet all contractual requirements;

(2) a satisfactory record of performance (a contractor that is behind on completing work under an existing contract with the District by 10 percent or more, may be considered ineligible for new District work);

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the District; and

(5) supplied all necessary information in connection with an inquiry concerning responsibility.

**2-213.03 Information pertaining to responsibility.** The bidder shall supply information requested by the District concerning responsibility. If the bidder fails to supply the requested information, the District shall base the determination of responsibility upon any available information or may find the bidder nonresponsible if the failure is unreasonable.

**2-213.04 Ability to meet standards.** The bidder may demonstrate the availability of necessary equipment, facilities, expertise, and personnel by submitting the following upon request:

(1) evidence that the bidder possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

**2-213.05 Right of non-disclosure.** Trade secrets supplied by a bidder in response to an inquiry by the District concerning the bidder's responsibility which the bidder has asked to be kept confidential will not be disclosed without the bidder's prior written consent.

**2-213.06 Written determination of nonresponsibility required.** If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible,

a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the District. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file. A determination that a bidder is not responsible may be protested under 4-401 (Legal Remedies) of these guidelines.

### III. SPECIFICATIONS

#### 3-301 Specifications

**3-301.01 Purpose.** The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item suitable for the needs of the District in a cost effective manner. Specifications must promote overall economy for the purposes intended, encourage competition, and not be unduly restrictive.

**3-301.02 Policy.** It is the policy of the District to procure standard commercial products if practical.

#### **3-301.03 Procedures for the development of specifications.**

**3-301.03.1 Use of functional or performance descriptions.** To the extent practical, specifications must emphasize functional or performance criteria necessary to meet the needs of the District. The preference for functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practical in construction, apart from the procurement of supply type items for a construction project.

**3-301.03.2 No restrictive specifications.** Except for small procurements under 2-206.02, all specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service or construction item, or procurement from a single source, unless no other manner of description will suffice.

**3-301.03.3 Review.** At the request of the General Manager, District Counsel will review the specifications for content, clarity, and completeness and to assure that they do not unduly restrict competition.

**3-301.04 Form of specifications.** Specifications may take one or a combination of the following forms.

**3-301.04.1 Design specifications** detail the precise characteristics that the purchased item must possess. The specifications may be so detailed as to describe how the product is manufactured.

**3-301.04.2 Performance specifications** establish the performance requirements for an item or service rather than the specific design criteria.

#### **3-301.04.3 Brand name specification.**

(1) brand name specification means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(2) because use of a brand name specification is restrictive, it may be used only when only the identified brand name item or items will satisfy the needs of the District.

#### **3-301.04.4 Brand name or equal specification**

(1) brand name or equal specification means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of



quality, performance, and other characteristics needed to meet District requirements and which provides for the submission of equivalent products.

(2) bidders proposing an “equal” product shall be responsible for submitting all additional information on the product necessary for the District to determine whether the product offered meets the essential characteristics of the brand name included in the specifications.

**3-301.05 Qualified products list.**

**3-301.05.1 Use.** A qualified products list may be developed if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy District requirements.

**3-301.05.2 Solicitation.** When developing a qualified products list, a representative group of potential suppliers must be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

**3-301.05.3 Testing and confidential data.** Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with prior published requirements. Test results may be made public in a manner that protects the confidentiality of the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential if requested in writing by the supplier.

**3-301.05.4 No prequalification.** The existence of a qualified products list does not constitute prequalification of any prospective supplier of prequalified products.

## **IV. LEGAL & CONTRACTUAL REMEDIES**

### **4-401 Legal Remedies**

#### **4-401.01 Right to protest.**

(1) An interested party may protest the award of a contract, the proposed award of a contract or a solicitation for supplies, services, professional services, or construction.

(2) Except for the protest of a small purchase made under 2-206, the provisions of 4-401.02 – 4-401.04.3 shall apply to a protest of the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction.

#### **4-401.01.1 Protests of small purchases.**

(1) If an interested party is not able to informally resolve a dispute with the District, the interested party may protest the solicitation or the award of a contract under 2-206 (Small Purchases). The protest must be filed with the District Clerk. If protesting the award of a contract, a protest must be filed within five days after notice of award is made. If protesting a solicitation, a protest must be filed prior to the date and time quotations or informal proposals are due. A protest must contain the information required under 4-401.02.2 (Form).

(2) the District will immediately give notice of the protest to the contractor or, if no award has been made, to all potential contractors who were solicited for the procurement.

(3) The General Manager or designee shall

(A) issue a decision denying the protest, stating the reasons for the denial;

(B) issue a decision which sustains the protest in whole or in part, states the appropriate remedy; or

(C) set a hearing on the protest consistent with the procedures contained in 4-401.03 (Hearing procedures).

#### **4-401.02 Filing of protest.**

**4-401.02.1 When filed.** Time periods for filing protests are as follows:

(1) Protest of provisions.

(A) An interested party may protest provisions of an invitation to bid or request for proposals by filing with the District a written protest that contains the information required by 4-401.02.2 no less than 10 calendar days before the date of bid opening or proposal opening, or by the date set out in the invitation to bid or request for proposals for filing the protest.

(B) If an invitation to bid or request for proposals was made with a shortened public notice period, a protest of provisions must be filed before the date of bid opening or proposal opening.

(C) If a pre-bid or pre-proposal conference was held within 12 days of the date of bid opening or proposal opening, a protest of provisions must be filed before the date of bid opening or proposal opening.

(2) Protest of cancellation. An interested party may protest the cancellation of an invitation to bid or request for proposals by filing with the District a written protest that includes the information required by 4-401.02.2 no more than 10 calendar days after a notice of cancellation is issued.

(3) Other protests. A protest may be filed no later than 10 calendar days after receipt of verbal or written notification of the intent to award.

(4) Time limits. A protest is considered filed when received by the District Clerk. Protests filed after the 10-day period will not be considered.

**4-401.02.2 Form.** To expedite handling of protests, the envelope should be labeled "Protest." The written protest must include as a minimum the following:

- (1) the name, address, and telephone number of the protester;
- (2) appropriate identification of the procurement;
- (3) a statement of reasons for the protest;
- (4) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date must be indicated;
- (5) the relief requested; and
- (6) the signature of the protestor or the protestor's representative

**4-401.02.3 Requested information; time for filing.** Any additional information requested of any of the parties should be submitted within the time periods established by the District in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the District or District Counsel may result in resolution of the protest without consideration of any information that is untimely filed pursuant to the request.

**4-401.02.4 Notice of a protest.** The District will immediately give notice of a timely protest to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

**4-401.02.5 Stay of procurement.** If a timely protest is filed, the District may proceed with the solicitation or award of the contract, unless the General Manager makes a written determination that

- (1) a reasonable probability exists that the protest will be sustained; or
- (2) a stay of the proceeding or award is not contrary to the best interests of the District.

**4-401.02.6 Decision by the General Manager.**

(1) A protest will be reviewed by the District in conjunction with District Counsel. If it is determined that the protest is valid in whole or in part, the District may

reevaluate the bids or proposals, cancel the solicitation and re-issue a new invitation to bid or request for proposals, or implement another appropriate remedy.

(2) In determining an appropriate remedy, the District shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the District and other impacts on it of a proposed remedy, and the urgency of the procurement to the District.

**4-401.02.7 Decision without hearing by the General Manager.** The General Manager shall dismiss a protest before a hearing is held if the General Manager in consultation with District Counsel determines in writing that the protest is frivolous, that there are no disputed issues of material fact; or the protest is untimely under 4-401.02.1 (When filed).

**4-401.03 Hearing procedures.**

**4-401.03.1 Scheduling.** A hearing will be scheduled expeditiously if a decision adverse to the protestor is made by the General Manager under 4-401.02.6 (Decision by the General Manager). The General Manager may direct that the hearing take place within a specified time period.

**4-401.03.2 Hearing officer.** The District Clerk shall designate a hearing officer.

**4-401.03.3 Notice of hearing.** The hearing officer shall send a written notice of the time and place of the hearing to the protester, to the District and to all other bidders, by certified mail, return receipt requested. The notice must state the nature and purpose of the proceeding.

**4-401.03.4 Authority of hearing officer.** The hearing officer may

(1) hold prehearing conferences to settle, simplify or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(2) require parties to state their positions concerning the various issues in the proceeding;

(3) require parties to produce for examination those relevant witnesses and documents under their control;

(4) issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the Florida Rules of Civil Procedure.

(5) rule on motions and other procedural matters;

(6) regulate the course of the hearing and conduct of participants;

(7) establish time limits for submission of motions or memoranda;

(8) receive, exclude or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(9) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;

(10) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including

(A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;

(B) excluding all testimony of an unresponsive or evasive witness; and

(C) excluding a person from further participation in the hearing; and

(11) administer oaths or affirmations.

**4-401.03.5 Hearings.** Hearings will be conducted in an informal manner. The weight to be attached to evidence is within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.

**4-401.03.6 Records.** The hearing will be recorded. A record of the hearing will be made available at cost to a party that requests it.

**4-401.03.7 Witnesses.** Witnesses shall testify under oath or affirmation and may be cross-examined.

**4-401.03.8 Bid preparation costs.** If a protest is sustained in whole or in part, the protester's damages are limited to reasonable bid or proposal preparation costs. A protester who requests reimbursement for bid or proposal preparation costs must provide detailed proof of these costs.

**4-401.04 Final decision.**

**4-401.04.1 Recommendation and decision.** The hearing officer shall issue a recommendation to the General Manager within five working days after the hearing. The recommendation must include findings of fact and conclusions of law. The District shall approve, modify, or disapprove the decision in whole or in part at a regularly scheduled meeting of the District Board of Commissioners. A copy of the hearing officer's recommendation and the District's final decisions will be provided to all parties.

**4-401.04.2 Protest upheld before award.** If the protest is made before award of the contract and is upheld, the District may cancel or reinstate the solicitation, reject or accept a bid or take other appropriate action.

**4-401.04.3 Protest upheld after award.** If a protest is upheld after contract award, the District may cancel the award or permit it to stand after determining that the best interests of the District warrant this action. Factors that will be considered include but are not limited to the following:

(1) the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies;

(2) the degree of prejudice to other interested parties or to the integrity of the procurement system;

(3) the good faith of the parties;

- (4) the extent the procurement has been accomplished;
- (5) costs to and other impacts on the District of a proposed remedy; and
- (6) the urgency of the procurement to the District.

**4-401.04.4 Judicial appeals.** A final decision of the District may be appealed to a court of competent jurisdiction located in Monroe County pursuant to applicable rules.

#### **4-402 Debarment of Vendors from Consideration for Contracts**

**4-402.01 Authority to debar.** After reasonable notification and opportunity for the person involved to be heard, the General Manager, after consultation with District Counsel, may debar a person for cause from consideration for award of contracts. The debarment may not be for a period of more than three years.

**4-402.02 Causes for debarment.** Causes for debarment include the following:

(1) conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract or in the performance of the contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty;

(3) conviction or civil judgment finding a violation under state or federal antitrust statutes;

(4) violation of any contract provisions that is regarded by the District to be so serious as to justify debarment action, such as:

(A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) violation of the ethical standards set out in law or regulation; and

(6) any other cause the District determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity.

**4-402.03 Notice of proposed debarment.** Written notice of a proposed debarment action must be sent by certified mail, return receipt requested, to the last known address of the contractor or prospective contractor. This notice must

(1) state that debarment is being considered;

(2) set out the reasons for the action; and

(3) state that the contractor or prospective contractor has a right to a hearing and may be represented by counsel.

**4-402.04 Hearing procedure.**

**4-402.04.1 Written request.** A person who has received a notice of proposed debarment is entitled to a hearing if the person files a written request for hearing within ten calendar days of issuance of the notice of proposed debarment. The request must set out specific grounds for the hearing.

**4-402.04.2 Procurement protest procedures apply.** The provisions of 4-402.04 (Hearing procedures) apply to debarment hearings.

**4-402.04.3 Written decision.**

(1) The General Manager shall issue a written decision to debar. The decision must

- (A) state the reasons for the action taken; and
- (B) inform the debarred person of his or her rights to judicial appeal.

(2) A copy of the decision must be mailed or otherwise furnished immediately to the debarred person and any intervening party.

**4-402.05 Reinstatement.**

**4-402.05.1 Written statement.** A debarred person may request reinstatement by submitting a written statement to the District showing that the cause for the debarment no longer exists or has been substantially mitigated.

**4-402.05.2 Determination by General Manager.** The General Manager may, at any time after a final decision to debar a person from consideration for award of contracts, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

**4-402.05.3 Hearing.** The District may require a hearing on the request for reinstatement. A written decision by the General Manager on the request will be made within ten calendar days of the submission of the request or within ten calendar days of the hearing. The decision must specify the factors on which it is based.

**4-402.05.4 Limited participation.** The General Manager may permit a debarred person to participate in a contract on a limited basis during the debarment period if the General Manager determines in writing that the participation is advantageous to the District. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

**4-402.06 List of persons debarred.** The District shall maintain a current list of all persons debarred from consideration for award of contracts.

**4-402.07 Removal from contractors list.** A person or business that is debarred or suspended will be removed from the contractors list.

**4-403 Contractual Remedies**

**4-403.01 Contract claims.** A contractor shall file a claim concerning a contract awarded under these guidelines.

**4-403.02 Time of Filing.**

(1) A claim under this section must be filed within 90 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier.

(2) Notwithstanding (1) of this section, a claim for a lease rate adjustment called for in a lease may be filed anytime prior to the expiration date of the lease.



## V. CONTRACT FORMATION AND MODIFICATION

### 5-501 Contract Formation and Modification

**5-501.01 Types of contracts.** Any type of contract that will promote the best interests of the District may be used, except that

- (1) the use of a cost-plus-a-percentage-of-cost contract is prohibited; and
- (2) a cost-reimbursement contract may be used only when a determination is made in writing by the General Manager that a cost-reimbursement contract is likely to be less costly to the District than any other type or that it is impractical to obtain the services, supplies, professional services or construction required except under a cost-reimbursement contract.

**5-501.02 Reserved.**

**5-501.03 Right to inspect plant.** The District may, at reasonable times, inspect the part of the plant or place of business of a prospective or current contractor or subcontractor for any purpose that is related to the performance of a contract awarded or to be awarded.

**5-501.04 Right to audit records.** The District may, at reasonable times and places, audit the books and records of a person who has submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to the cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is authorized in writing by the District.

**5-501.05 Contractors and subcontractors.** The District may audit the books and records of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. The contractor must maintain books and records for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the District.

**5-501.06 Reserved.**

**5-501.07 Transfer.** A contract may not be transferred or otherwise assigned without the prior written consent of the District.

**5-501.08 Multi-term contracts.**

**5-501.08.1 General guidelines.** Unless otherwise provided by law, a contract for services, supplies or professional services may be entered into for any period of time considered to be in the best interests of the District provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability of funds.

**5-501.08.2 Written determination.** Before using a multi-term contract, the General Manager shall determine in writing that:

(1) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) the contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in procurement.

**5-501.08.3 Contract cancellation.** When funds are not available to support continuation of performance in a subsequent fiscal period, the contract will be cancelled. The contractor may be reimbursed only for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services, supplies or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any appropriations available for these purposes.

**5-501.09 Leases.**

**5-501.09.1 Occupancy periods.** A lease may not provide for a period of occupancy greater than 40 years.

**5-501.09.2 Lease extensions authorized.** (a) The District may extend, for up to a maximum extension of 10 years, a real property lease that is entered into under these guidelines, if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension can be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

## **VI. INTERGOVERNMENTAL RELATIONS**

### **6-601 Intergovernmental Relations**

**6-601.01 State or Federal Assistance.** If a procurement involves the expenditure of state or federal money or requires state or federal assistance and there is a conflict between a provision of these guidelines and a state or federal statute, regulation, policy, or requirement, the District shall comply with the applicable state or federal statute, regulation, policy, or requirement.

## **VII. RETENTION AND CONTENT OF PROCUREMENT RECORDS**

### **7-701 Retention and Content of Procurement Records**

**7-701.01 Procurement files.** The District shall retain procurement files for ten years from the date of award. The procurement files will contain the following, as applicable:

- (1) a copy of the contract;
- (2) the register of bids or proposals and a copy of each submitted; and
- (3) the written determination to award the contract.

**7-701.02 Single source and emergency procurement records.** The District shall maintain a record of single source and emergency procurements for five years from the date of award. The record will contain the following:

- (1) each contractor's name;
- (2) the amount and type of each contract;
- (3) a list of the services, supplies, professional services or construction procured under each contract; and
- (4) the identification number of the contract file.

**7-701.03 Public inspection.** The records described in 7-701.01 and 7-701.02 above shall be available for public inspection.

## VIII. DEFINITIONS OF TERMS USED IN THESE GUIDELINES

### 8-801 Definitions of Terms Used in These Guidelines

**8-801.01 Archival materials** means non-current records that are preserved after appraisal because of their value.

**8-801.02 Audio-visual materials** means non-book slides, transparencies, films and items that require the use of equipment

**8-801.03 Business** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**8-801.04 Business license** means the license required under applicable law.

**8-801.05 Construction** means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to real property.

**8-801.06 Contract** means all types of District agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment, services, professional services, or construction.

**8-801.07 Design-build construction contract** means a construction contract between the District and a design-builder to furnish architecture, engineering, and related design services, and to furnish construction services, including labor and materials.

**8-801.08 Interested party** means an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract or the failure to award a contract.

**8-801.09 Invitation to bid** means all documents, whether attached or incorporated by reference, used for soliciting bids.

**8-801.10 Minor informalities** means matters of form rather than substance which are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other bidders.

**8-801.11 Network information services** means a group of resources from which cataloging information, holdings records, inter-library loans, acquisitions information, and other reference resources can be obtained.

**8-801.12 Nonresponsive** means a bid or proposal that does not conform in all material respects to the solicitation.

**8-801.13 Person** means a business, individual, union, committee, club, other organization, or group of individuals.

**8-801.14 Practicable** means what may reasonably be accomplished or put into practical application. The terms "practical" and "practicable" shall be considered to have the same meaning.

**8-801.15 Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring supplies, equipment, services, or construction. It also includes functions that pertain to the obtaining of supplies, equipment, services or construction (including description of requirements), selection and solicitation of sources, preparation, and award of contracts and all phases of contract administration.

**8-801.16 Produced or manufactured** means processing, developing or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill or other services.

**8-801.17 Product** means materials or supplies.

**8-801.18 Professional services** means professional, technical or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task and include analysis, evaluation, prediction, planning or recommendation.

**8-801.19 Protester** means an interested party who is aggrieved in connection with the solicitation, cancellation or the award of a contract and who files a protest.

**8-801.20 Request for proposals** means all documents, whether attached or incorporated by reference, used for soliciting proposals.

**8-801.21 Responsible bidder or offeror** means a person or business that has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

**8-801.22 Responsive bidder** means a person or business who has submitted a bid that conforms in all material respects to the solicitation.

**8-801.23 Services** means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

**8-801.24 Solicitation** means an invitation to bid, a request for proposals, a request for quotations or any other document issued for the purpose of soliciting bids or proposals to perform a contract.

**8-801.25 Specification** means a description of the physical or functional characteristics or of the nature of a supply, service, professional service, or construction item. It may include requirements for licensing, inspection, testing, preparation, and delivery.

**8-801.26 Supplies** means all personal property, including but not limited to equipment, materials, printing and insurance; it includes privately owned real property leased for court system use, but does not include the acquisition or disposition of other interests in land.