

Staff Report

for the Administrative Practices Committee for December 9, 2019

TO: Administrative Practices Committee

FROM: Marvin Davis, MBA, CPA, Finance Manager/Treasurer
Remleh Scherzinger, MBA, SDA, P.E., General Manager

DATE: December 4, 2019

SUBJECT: Updates to District Policy 3080 - Procurement

FINANCE

RECOMMENDATION:

Review the proposed updates to District Policy 3080 – Procurement, and advance a recommendation to the Board of Directors as appropriate.

BACKGROUND:

Staff and legal addressed requests to review the procurement policy and recommend the following updates:

- NID is exempt from the procurement procedures in the Public Contract Code (PCC) when projects are not paid from bonds or limited assessment proceeds. The California Water Codes gives authority to the District to develop procurement policies and procedures.
- The District must follow the PCC when paying for projects from bond or limited assessment proceeds. In addition, the District must follow “Sole Source” rules set forth in the PCC and defined in this policy.
- The term “Limited Assessment” is defined in Water Code § 20540 and refers to completed, particular, or emergency assessments. An assessment is a financing mechanism similar to the District’s Cement Hill and Rodeo Flat.
- Use of the District’s professional service and construction contracts are dictated by the type of professional assistant required and the complexity of the construction project.

- The District shall solicit qualified vendors in the construction industry to develop a list of contractors. The list shall be updated annually and used when the District requests vendors for construction jobs. Depending on the qualified vendors on the approved list, the District may solicit additional vendors if necessary. The updated list shall be posted on the District's website by January 31 of each year.

Procure policy review achieves the Goal No. 1 of the District's Strategic Plan by demonstrating proactive management of our physical, financial, and human resources.

BUDGETARY IMPACT: N/A
/MD

Attachment(s): (2)

- Red-lined District Policy 3080 – Procurement
- Draft District Policy 3080 - Procurement

Nevada Irrigation District

POLICY MANUAL

POLICY TITLE: Procurement

POLICY NUMBER: 3080

3080.1 Purpose

In accordance with California Water Code, the District has authority to develop and implement a procurement policy to procure the necessary goods and services to operate. The purpose of Policy 3080 is to define the types of goods and services purchased by the District, to set forth policy guidelines for the various types of purchases, and to establish set forth the dollar levels governing purchase authority of the General Manager or a designee management personnel. All purchases, including contracts for services (construction and non-construction), commodities, equipment and other real or personal property required by any department of the District shall be made in accordance with this policy. A purchase, via any means, may be initiated only if sufficient funds are appropriated and there is sufficient unencumbered remaining balance to pay for it.

3080.2 Administrator

The Board of Directors delegates the authority to make purchases under this policy to the General Manager. The General Manager shall have the authority to delegate the purchasing duties and responsibilities within the a departments of the District to the responsible Department Manager. The designated Manager shall administer the Purchasing Procedure adopted by the Board, negotiate and approve term contracts and purchase products and services required, consistent with the principles of price, quality and delivery. The Manager shall work with the Purchasing Department to maintain verifiable records of the goods in inventory, and to ensure all goods are tagged or conspicuous as District property to the extent feasible. All surplus property shall be disposed of in accordance with section 3080.5.

3080.3 Public Contract Codes (PCC) applies to Irrigation Districts

Article 35, Chapter 1, Part 3, Division 2 of the Public Contract Code (§§ 20560 et seq.) sets forth the circumstances under which the District is legally required to competitively bid certain types of contracts. The District will follow the process set forth in the Public Contract Code when the District is legally required to competitively bid; namely, when the proposed works is to be paid for with the proceeds of the sale of bonds or a limited assessment as defined in Water Code § 20540. In all other situations, the District shall follow the applicable procurement process set forth in this policy 3080.

3080.43 Definitions

For the purpose of this policy, the following definitions shall apply:

- A. "Public Entity" means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state of California.
- B. "Goods" means any tangible commodities or items such as supplies, parts, materials, equipment, or building. Generally, Goods are consumable in District's normal course of business ~~operations~~, and can become part of a component of the District equipment or facilities. On some occasions, Goods may be purchased to supply to a contractor engaged in work for the District. For the purpose of this policy, Land and interest in land are not "Goods" and are controlled in other District policies.
- C. "Services" means all non-tangible skills that may be purchased by the District and can include the services of a licensed contractor, special counsel, architect, appraiser, engineer, financial consultant, janitor, landscaper, painter or other work typically rendered by an independent consultant or contractor.
- D. "Contract" means any agreement ~~to do or not to do a certain thing or~~ to provide Goods or Services. "Contract and agreement" are synonymous. The term "Contract" includes, among other things, a purchase order, a contract for services, a professional service agreement, and an addendum or change order. Purchases by Staff shall use standard contracts approved by the Board of Directors. General Manager and/or Legal Counsel can make minor modifications as needed. Special contracts shall only be used when the Goods or Services are of a unique or specialized nature that is not compatible with a standard form of Contract.
- E. "Change Order" means any change to an approved and executed contract. A change order can edit or add task orders. When determining authority levels, the original contract and subsequent change orders are evaluated as a single purchase.
- F. "Task Order" means a singular listing of tasks under the scope of work within the ~~under a~~ Contract.
- G. "Cost" means the amount charged under a Contract, inclusive of sales tax, use tax, delivery charges, shipping and/or handling.
- H. "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss of impairment of life, health, property, or essential public services.
- I. "Public Works" is synonymous with "Public Project" and means a project performed under a "Public Works Contract" defined as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- J. "Sole Source" means ~~developing/manipulating~~ "bid" specifications for the contracting of construction, alteration or repair of public works that limit the bidding, directly or indirectly, to a specific concern, or call for a designated material, product, thing, or service by specific brand or trade name. For the purpose of this policy, sole source shall not be applied to the purchase of goods that will be used by the District's own

labor force.

It is the intent of this Policy that Sole Source purchases by the District will not occur without allowance for substitution of an "or equal" part or service. Notwithstanding the foregoing prohibition, Sole Source purchases will be allowed provided the District makes a finding that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

- 1) In order that a field test or experiment may be made to determine the product's suitability for future use.
 - 2) In order to match other products in use on a particular public improvement either completed or in the course of completion
 - 3) In order to obtain a necessary item that is only available from one source
 - 4) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.
 - 5) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.
- K. "Surplus Property" means any personal property, owned by the District that is determined no longer useful.
- L. "Market Value" means the value established between willing buyer and willing seller, within the marketplace of the District, as estimated by the General Manager, Department Manager, Purchasing Department or appraiser and may be an average from these sources.
- M. "Design/Build" means Contract awarded under a selection process similar to the Request for Proposal, where the contractor is responsible for both design and construction of the Public Work.
- N. "Request for Proposal (RFP)" means a selection process, other than formal bidding, established by the District staff for the selection of consultants, contractors or vendors to provide a proposal costs to perform a single project or purchase. The selection process shall include cost for work as one of the evaluation criteria but shall not be constrained by the requirements of the Public Contract Code (PCC) governing bidding.
- O. "Request for Bid (RFB)" means a more formal selection process as further described under PCC, the Local Agency Public Construction Act
- P. "Informal Quote Process (IQP)" means a selection process that includes a documented attempt to procure goods or services to a minimum of three contractors, consultants or vendors to provide total costs on a single project or purchase.
- Q. "Formal Quote Process (FQP)" means the written solicitation using the District's standard quote contract, plans, and specifications distributed to a minimum of five contractors, consultants or vendors to provide costs on a single project or purchase. Formal quotes are provided in a sealed envelope and are opened at a publicly noticed time and place by District staff.

- R. "A quote or bid" as outlined in the contract documents or equivalent to a letter, email, or documented verbal solicitation to a viable contractor, consultant or vendor with or without a response from the contractor or consultant.
- S. "Responsible Bidder" means a licensed contractor who has not been barred from government contracts for prior misconduct, and has the equipment and skills necessary to perform the work. Also, the bid must be an unconditional offer to provide the goods and services and comply with all the bid procedures in the bid documents and when applicable in the Local Agency Public Construction Act.

3080.54 Emergency Purchases

In case of "Emergency", ~~the two Department Managers or~~ General Manager or designee may procure any items deemed necessary to preserve life or property, without the authorization of an approved purchase requisition. Approval may be obtained after the fact. The General Manager shall notify the Board ~~President members~~ via telephone or email of the emergency procurement and shall thereafter report the incident to the Board of Directors at the next regularly scheduled board meeting, including a comprehensive estimate of the total cost of emergency repairs; following the initial report, the General Manager or designee Department Manager shall submit appropriate documentation for final approval/ratification by the Board of Directors. Notwithstanding the foregoing, nothing herein shall restrict the Board of Directors from considering such Emergency Purchase in a special or emergency meeting, if authorized by law.

3080.65 Surplus Property

When disposing of ~~moveable~~ property, ~~the following limits will be observed if practical, Department Managers shall forward property to the Purchasing Department who will secure items.~~

- A. Less than ~~\$5,000 100,000~~- Surplus property, ~~if of~~ a single item is within this estimated market value, it will be disposed using the most advantageous method determined by the General Manager, including, but not limited to, -transporting items to local waste and recycling center.
- B. ~~\$5,000 100,000~~ and Greater - Surplus property, of a single item within this estimated market value will be disposed by Sealed Bid, Auction, On-Line Auction or Remarketing Service Provider and may require formal appraisal.

3080.76 Purchase Process & Authority Levels

The purchase of "Goods" or "Services" shall follow the below process and is driven by the aggregate amount of a single purchase requisition, contract requirements, competitive bidding process, and approval levels. It is a violation of this policy to split into smaller orders an aggregate single purchase for the purpose of evading this policy as determined by the General Manager. The General Manager shall have purchasing authority not to exceed \$50,000.

- A. Less than \$5,000 – Purchase requisitions submitted to Purchasing under this dollar amount may not require creation of a purchase order ~~and~~ at Department Manager discretion, ~~nor bidding, and approval levels are in accordance with the most recently authorized "Signed Authority Limits" schedule.~~

- B. \$5000 up to \$25,000 – Purchase requisitions submitted to Purchasing within this dollar range will require creation of a purchase order that can serve as the Contract and; no bidding required; ~~and approval levels are according to the most recent “Signed Authority Limits” schedule.~~
- C. \$25,000.01 up to \$50,000 – Purchase requisitions submitted to Purchasing for “Goods” within this dollar range will require creation of a purchase order, a Contract for Services, compliance with the IQP, award in accordance with the IQP; ~~and approval levels are according to the most recent “Signed Authority Limits” schedule.~~
- D. \$50,000.01 up to \$100,000 - Purchase requisitions submitted to Purchasing within this dollar range will require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP, award in accordance with the standards contained in the selection process, and approval is required by the Administrative Practices Committee (APC). ~~levels are according to the most recent “Signed Authority Limits” schedule.~~
- E. \$100,000.01 up to \$250,000 - Purchase requisitions submitted to Purchasing within this dollar range will require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP, award in accordance with the standards contained in the selection process, and approval is required by the Board of Directors at an Administrative Practice Committee (APC) meeting.
- F. \$250,000 and Greater – Purchase requisitions submitted to purchasing within this dollar range will require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP, award in accordance with the standards contained in the selection process, and approval is required by the at a Board of Directors meeting.
- G. Change Orders – Each additional purchase under the original contract require the following authority approvals:
- 1) Department Managers – Cumulative change orders on a single contract up to Department Managers Signing Authority.
 - 2) Level I: General Manager – Cumulative change orders up to a maximum of 25% of the original contract amount or \$250,000 300,000, whichever is less. All cChanges orders in excess of \$150,000 shall be reported to the Board of Directors at the next regular Board meeting.
 - 3) Level II: Administrative Practices Committee (APC) – Cumulative change orders up to a maximum of 25% of the original contract amount or \$500,000, whichever is less. Changes in excess of \$250,000 shall be reported to the Board of Directors at the next regular Board meeting.
 - 4) Level III: Board of Directors – Change orders that do not meet the requirements of Level 1 or Level II shall be authorized by the Board of Directors. An advance recommendation by the APC is strongly suggested.
 - 5) Resetting of Authority - When the Board approves a change order or Task Order, it resets

~~grants the Department Manager and~~ General Manager ~~and designee~~ original approval amounts.

3080.8 Template District Contracts

The District shall maintain standard template contracts to carry out the purposes of the District. The template contracts will be reviewed and updated periodically by District legal counsel at the request of the General Manager. Template contracts include the following:

3080.x.1 Consultant Service Contracts

Consultant service contracts are used for the procurement of professional services provided by the following type of professions: attorney, architect, appraiser, engineering, financial consultant, accountant, etc.

3080.x.2 Service Contracts

Service contracts are used for the procurement of routine non-consultant services such as the following: janitorial, landscaping, facility maintenance, etc.

3080.x.3 Construction Contracts; Short form and Long form

All construction contracts can be used to perform a “public works” project as defined under paragraph I. The individual or firm is licensed under the California Contractors State License Board. The duration and difficulty of the job under contract determines the appropriate contract to use. Each type of contract has provisions within it suitable for that engagement. The District considers the below guidelines when selecting the short form or long form construction contract:

- Abbreviated construction contract – simple projects with limited digging or small engineering
- Short construction contract – more complex project, multiple pay request, typically job requiring less than 90 days
- Long construction contract – extensive complex project, can take years

3080.9 District Contractor List

The District shall solicit qualified vendors in the construction industry to develop a list of contractors. The list shall be updated annually and used when the District request vendors for construction jobs. Depending on the qualified vendors on the approved list, the District may solicit additional vendors when necessary. The updated list shall be posted on the District’s website by January 31 of each year.

Adopted: April 24, 2013 via Resolution No. 2013-11

Revised: April 13, 2016 via Resolution No. 2016-14

Revised: June 27, 2018 via Resolution No. 2018-15

Revised: Month, DD, YYYY via Resolution No. 2019-XX

Nevada Irrigation District

POLICY MANUAL

POLICY TITLE: Procurement
POLICY NUMBER: 3080

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3080.4 Definitions

For the purpose of this policy, the following definitions shall apply:

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- B. "Goods" means any tangible commodities or items such as supplies, parts, materials, equipment, or building. Generally, Goods are consumable in District's normal course of business and can become part of a component of the District equipment or facilities. On some occasions, Goods may be purchased to supply to a contractor engaged in work for the District. For the purpose of this policy, Land and interest in land are not "Goods" and are controlled in other District policies.
- C. "Services" means all non-tangible skills that may be purchased by the District and can include the services of a licensed contractor, special counsel, architect, appraiser, engineer, financial consultant, janitor, landscaper, painter or other work typically rendered by an independent consultant or contractor.
- D. "Contract" means any agreement to provide Goods or Services. "Contract and agreement" are synonymous. The term "Contract" includes, among other things, a purchase order, a contract for services, a professional service agreement, and an addendum or change order. Purchases by Staff shall use standard contracts approved by the Board of Directors. General Manager and/or Legal Counsel can make minor modifications as needed. Special contracts shall only be used when the Goods or Services are of a unique or specialized nature that is not compatible with a standard form of Contract.
- E. "Change Order" means any change to an approved and executed contract. A change order can edit or add task orders. When determining authority levels, the original contract and subsequent change orders are evaluated as a single purchase.
- F. "Task Order" means a singular listing of tasks under the scope of work within the Contract.
- G. "Cost" means the amount charged under a Contract, inclusive of sales tax, use tax, delivery charges, shipping and/or handling.
- H. "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss of impairment of life, health, property, or essential public services.
- I. "Public Works" is synonymous with "Public Project" and means a project performed under a "Public Works Contract" defined as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- J. "Sole Source" means developing "bid" specifications for the contracting of construction, alteration or repair of public works that limit the bidding, directly or indirectly, to a specific concern, or call for a designated material, product, thing, or service by specific brand or trade name. For the purpose of this policy, sole source shall not be applied to the purchase of goods that will be used by the District's own labor force.

It is the intent of this Policy that Sole Source purchases by the District will not occur without allowance for substitution of an "or equal" part or service. Notwithstanding the foregoing prohibition, Sole Source purchases will be allowed provided the District makes a finding that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

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 - 2) In order to match other products in use on a particular public improvement either completed or in the course of completion
 - 3) In order to obtain a necessary item that is only available from one source
 - 4) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.
 - 5) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.
- K. "Surplus Property" means any personal property, owned by the District that is determined no longer useful.
- L. "Market Value" means the value established between willing buyer and willing seller, within the marketplace of the District, as estimated by the General Manager, Department Manager, Purchasing Department or appraiser and may be an average from these sources.
- M. "Design/Build" means Contract awarded under a selection process similar to the Request for Proposal, where the contractor is responsible for both design and construction of the Public Work.
- N. "Request for Proposal (RFP)" means a selection process, other than formal bidding, established by the District for the selection of consultants, contractors or vendors to provide a proposal to perform a single project or purchase. The selection process shall include cost for work as one of the evaluation criteria but shall not be constrained by the requirements of the Public Contract Code (PCC) governing bidding.
- O. "Request for Bid (RFB)" means a more formal selection process as further described under PCC, the Local Agency Public Construction Act
- P. "Informal Quote Process (IQP)" means a selection process that includes a documented attempt to procure goods or services to a minimum of three contractors, consultants or vendors to provide total costs on a single project or purchase.
- Q. "Formal Quote Process (FQP)" means the written solicitation using the District's standard quote contract, plans, and specifications distributed to a minimum of five contractors, consultants or vendors to provide costs on a single project or purchase. Formal quotes are provided in a sealed envelope and are opened at a publicly noticed time and place by District staff.
- R. "A quote or bid" as outlined in the contract documents or equivalent to a letter, email, or documented verbal solicitation to a viable contractor, consultant or vendor with or without a response from the contractor or consultant.
- S. "Responsible Bidder" means a licensed contractor who has not been barred from government contracts for prior misconduct, and has the equipment and skills necessary to perform the work. Also, the bid must be an unconditional offer to provide the goods and services and comply with all the bid procedures in the bid documents and when applicable in the Local Agency Public Construction Act.

3080.5 Emergency Purchases

In case of "Emergency", the General Manager or designee may procure any items deemed necessary to preserve life or property, without the authorization of an approved purchase requisition. Approval may be obtained after the fact. The General Manager shall notify the Board President via telephone or email of the emergency procurement and shall thereafter report the incident to the Board of Directors at the next regularly scheduled board meeting, including a comprehensive estimate of the total cost of emergency repairs; following the initial report, the General Manager or designee shall submit appropriate documentation for final approval/ratification by the Board of Directors. Notwithstanding the foregoing, nothing herein shall restrict the Board of Directors from considering such Emergency Purchase in a special or emergency meeting, if authorized by law.

3080.6 Surplus Property

When disposing of property, the following limits will be observed.

- A. Less than \$5,000 - Surplus property, if a single item is within this estimated market value, it will be disposed using the most advantageous method determined by the General Manager, including, but not limited to, transporting items to local waste and recycling center.
- B. \$5,000 and Greater - Surplus property, of a single item within this estimated market value will be disposed by Sealed Bid, Auction, On-Line Auction or Remarketing Service Provider and may require formal appraisal.

3080.7 Purchase Process & Authority Levels

The purchase of "Goods" or "Services" shall follow the below process and is driven by the aggregate amount of a single purchase requisition, contract requirements, competitive bidding process, and approval levels. It is a violation of this policy to split into smaller orders an aggregate single purchase for the purpose of evading this policy as determined by the General Manager. The General Manager shall have purchasing authority not to exceed \$50,000.

- A. Less than \$5,000 – Purchase requisitions submitted to Purchasing under this dollar amount may not require creation of a purchase order at Department Manager discretion.
- B. \$5000 up to \$25,000 – Purchase requisitions submitted to Purchasing within this dollar range will require creation of a purchase order that can serve as the Contract and no bidding required.
- C. \$25,000.01 up to \$50,000 – Purchase requisitions submitted to Purchasing for "Goods" within this dollar range will require creation of a purchase order, a Contract for Services, compliance with the IQP, award in accordance with the IQP.
- D. \$50,000.01 up to \$100,000 - Purchase requisitions submitted to Purchasing within this dollar range will require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP, award in accordance with the standards contained in the selection process, and approval is required by the Administrative Practices Committee (APC).
- E. \$100,000.01 up to \$250,000 - Purchase requisitions submitted to Purchasing within this dollar range will

- require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP award in accordance with the standards contained in the selection process, and approval is required by the Board of Directors.
- F. \$250,000 and Greater – Purchase requisitions submitted to purchasing within this dollar range will require creation of a purchase order, a Contract for Services, a selection process that is one of the following: RFP, RFB, FQP, award in accordance with the standards contained in the selection process, and approval is required by the Board of Directors.
- G. Change Orders – Each additional purchase under the original contract require the following authority approvals:
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 - 2) Level 1: General Manager – Cumulative change orders up to a maximum of 25% of the original contract amount or \$250,000, whichever is less. All change orders shall be reported to the Board of Directors.
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