

22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the District, provided however that:

- (1) If there is no list of qualified contractors maintained by the District for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.
- (2) If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

All notices to contractors and construction trade journals pursuant to this Section shall be issued not less than ten (10) calendar days before bids are due. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

- E. **Award of contracts.** The General Manager and the Purchasing Agent are each authorized to award informal contracts pursuant to this Section for projects that have been approved by the Board of Directors in the Capital Improvement Plan. The Board of Directors shall award all other informal contracts pursuant to this Section.
- F. **Change orders.** The General Manager may, without authorization of the Board of Directors, approve change orders for public projects awarded pursuant to this Section 2 that are up to 20% of the initial award amount for projects with an initial award up to \$175,000, and up to 15% of the initial award amount for projects with an initial award between \$175,000 and \$187,500.
- G. **Separation of Work Orders.** The District shall not split or separate into smaller work orders or projects any project for the purpose of evading the provisions this Ordinance or state law requiring work to be done by contract after competitive bidding.

### **2.03.030 Formal Bidding for Construction**

- A. **Formal Bidding Required.** Except as otherwise authorized by this Ordinance, all public projects shall be constructed and all contracts for the construction of work shall be let pursuant to state law regarding competitive bids and the work shall be performed by the contractor who shall be found and determined by the Board of Directors to have presented the lowest responsible and responsive bid for each instance.
- B. **Construction approval by Board.** Plans and specifications shall be approved by the Board of Directors prior to the invitation of bids for construction projects subject to formal bidding.
- C. **General notice inviting bids.** Unless otherwise directed by the Board, each notice inviting bids shall be signed by the District Engineer and shall be published twice not less than five (5) calendar days apart in a newspaper of general circulation printed and published in Napa County at least fourteen (14) calendar days prior to the date fixed for receiving and opening bids. The notice shall also be mailed to all construction trade journals designated by the California Uniform Cost Accounting Commission to receive mailed notice for all informal and formal construction contracts being bid for work within Napa County at least thirty (30) calendar days prior to the date designated for opening bids.

- D. **Bid documents and Addenda.** Complete sets of bid documents shall be the basis for bidders to make submissions. The District may require bidders to pay a fee associated with the production and distribution of bid documents; said fee shall be clearly stated in the notice inviting bids. Bidders shall use complete sets of bidding documents when submitting bids. Bidders may request clarification or interpretation of the bid documents in writing, which shall be received at least seven (7) calendar working days prior to the date for receipt of bids, or as otherwise specified in the bid document. Any interpretation, correction or change of the bidding documents will be made by addendum to the bid invitation. Any addenda will be delivered to all that are known by the District to have received a complete set of bidding documents. No addenda will be issued later than four (4) working days prior to the date for receipt of bids, except for an addendum withdrawing the request for bids or one that includes postponement of the date for receipt of bids. It is the responsibility of the bidder to ascertain prior to submitting a bid that bidder has received all addenda issued.
- E. **Substitutions.** Materials, products and equipment described in the bidding documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. The burden of proof to demonstrate the merit of proposed alternate or substitute is on the bidder. Non-solicited proposals for substitutions may be considered for award if submitted by the bidder who would otherwise be the low bid. The District's decision whether to accept a substitution shall be final.
- F. **Bid Security.** The District may, at its discretion, require a bid bond or bid deposit to protect the District in the event the bidder awarded the contract does not execute the contract. In the event an otherwise low bidder is allowed to withdraw a bid due to claim of error, the District may retain the bid security to offset its administrative costs.
- G. **Bid opening date.** Each Notice Inviting Bids shall be assigned a bid opening date and time by which bids must be received to be considered. Bids received after the date and time advertised for opening will be considered non-responsive and will be rejected.
- H. **Correction and withdrawal of bids.** No change or correction to a bid shall be permitted that would prejudice the interest of the public or be unfair to other bidders. The following shall be considered regarding corrections or withdrawal of bids:
- (1) **Waiving Informalities.** The notice inviting bids may contain provisions allowing the District to waive informalities and accept the bid that appears to be in the best interest of the District. Such informalities may consist of the correction of minor errors, but only if the bid is substantially in compliance with the terms and conditions of the notice. Errors that are not material and do not invalidate the legitimacy of a bid may be waived as informal errors.
  - (2) **Bid Withdrawal Prior to the Bid Opening.** Prior to bid opening, mistakes in bids detected by a bidder may be corrected or a bid withdrawn upon written request signed by an authorized representative of the bidder.
  - (3) **Judgmental Errors.** A bid may not be withdrawn as the result of a mistake attributable to the bidder's error in judgment. Bid withdrawal by reason of non-judgmental error may be allowed, but only to the extent consistent with, and pursuant to the criteria set forth in, state law.

- (4) **Correcting Mistakes in Bids.** During or after bid opening, mistakes detected in bids may not be corrected by the bidder except:
- (a) A bidder may be permitted to correct a material mistake that would cause such bidder to have the low bid if the mistake is clearly evident from examining the bid document; for example, arithmetical errors. However, a bidder shall not be permitted to correct a bid for errors of judgment.
  - (b) An otherwise low bidder may be permitted the opportunity to furnish other information called for by the notice inviting bids and not supplied due to oversight, so long as it does not affect responsiveness.
- I. **Reservation of right to reject bids and/or require rebid.** The District reserves the right to reject any or all bids in whole or in part and may waive any irregularities or informalities in any bid when, after consideration of all relevant circumstances, such action is considered in the best interest of the District.
- J. **Bid award.** Bid awards shall be made to the lowest responsive bid from a responsible bidder. All awards shall be made by written notice to the successful bidder and shall be promptly made public information.
- (1) A bid shall be considered responsive when the bidder has complied with the terms, conditions, provisions, specifications, instructions, and all other requirements of the notice inviting bids. The determination whether or not a bid is considered responsive is an administrative decision made by the Purchasing Agent.
  - (2) A bidder shall be considered responsible when it has been established that s/he has the technical capability, financial capacity, facilities, and work force required to perform as outlined in the provisions and conditions of the bid. Safety performance may be used as a consideration. Reference checks and documented past performance history may be considered when determining whether a bidder has the capability to fulfill the requirements of the project.
- K. **Cancellation of bid award.** Failure on the part of the successful bidder within the time allowed to execute the contract or comply with any other requirement imposed precedent to execution of the contract shall be considered just cause for cancellation of the award and forfeiture of the bid security, not as a penalty, but in liquidation of certain damages sustained. Contract award may then be made to the next lowest responsive bid from a responsive bidder, or the notice inviting bids may be cancelled.
- L. **Tie bids.** If the bid evaluation results in a determination that there has been a tie for lowest responsive bid between two or more bids received, which are for the same total amount or unit price and in all other respects equal, and if there is no evidence of collusion between the tie bidders, then the District may award the bid based on local preference; but if equal on that point, then on safety performance; but if equal on that point, then on credit history; but if equal on that point, then on completion history; but if equal on that point, then the District shall have the tie bidders draw lots for the bid award.
- M. **Change orders.** The General Manager may, without authorization of the Board of Directors, approve change orders in connection with contracts for public projects under this Section up

to ten percent (10%) of the original contract amount, with a maximum cumulative change order amount of five hundred thousand dollars (\$500,000).

#### 2.03.040 Purchase of Goods and Materials

- A. **Offer and acceptance.** The Uniform Commercial Code establishes that a contract exists when there has been offer and acceptance. Thus, the terms of an agreement to buy or sell are not fixed until offer and acceptance have been established. Written quotes submitted by prospective vendors are recognized as offers and purchase orders or contracts issued by the District serve as acceptance. Verbal offers are not recognized as offers. When verbal quotes are received, the District's issuance of a purchase order is considered an offer and acknowledgement or delivery by the vendor is considered acceptance. A facsimile or email quote is construed to constitute a written offer.
- B. **Purchase of Goods and Materials under \$3,000.** Competitive quotes for the purchase of goods and materials are not required when unit cost of such goods or materials is under three thousand dollars (\$3,000). The Purchasing Agent may delegate the authority to purchase goods and materials under \$3,000 to specific District positions, including supervisors.
- C. **Purchase of Goods and Materials \$3,000 or over**
  - (1) **Award to Low Bid.** Except as otherwise provided by this Ordinance, at least three (3) quotes shall be solicited for the purchase of those goods and materials with a cost of three thousand dollars (\$3,000) and above, with the contract for purchase awarded to the low bid. Quotes shall be documented.
  - (2) **Competition.** Except as allowable through Sole Source Procurement section of this Ordinance, bid specifications should be written to allow for competition and not to exclude all but one kind or type of product, and should describe the performance requirements rather than its formulation, description or design.
  - (3) **Delegation.** The Purchasing Agent may delegate the authority to purchase goods and materials under ten thousand dollars (\$10,000) to District department heads.
  - (4) **Reservation of Right to Reject Bids and/or Require Rebid.** The District reserves the right to reject any or all bids in whole or in part and may waive any irregularities or informalities in any bid when, after consideration of all relevant circumstances, such action is considered in the best interest of the District. The District further reserves the right to rebid any purchase of goods or materials, regardless of any prior actions to request bids.

#### 2.03.050 Procurement of Professional Services

- A. **Professional Services-Generally.** Professional services are consulting or professional/technical services not provided by District employees. Professional Services include, but are not limited to, financial, economic, accounting, legal, medical, therapeutic and administrative services.