

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration


2500 Jupiter Park Drive, Jupiter, Florida 33458-8964

Telephone (561) 747-5700 • Fax (561) 747-9929 • www.loxahatcheeriver.org



D. Albrey Arrington, Ph.D., Executive Director

MEMORANDUM

TO: GOVERNING BOARD
FROM: D. ALBREY ARRINGTON, Ph.D. 
DATE: MAY 18, 2016
SUBJECT: PROCUREMENT POLICY

District staff relies on our Procurement Policy for guidance and direction when purchasing goods, supplies, and services. The last revision to our Procurement Policy was approved by the Board in June, 2013. In the attached draft Procurement Policy, staff has made suggested revisions to our policy that clean up formatting, enhance organization, and improve the actual processes. In particular, we have worked to improve our Change Order approval process. Revisions to our Procurement Policy include:

1. Section 1.01 update Director of Operations to Director of Finance and Administration;
2. Section 1.02 provides a definition of “Change Order” and alphabetize Purchasing Principal definition;
3. Section 2.0 revise Category Two upper threshold from \$35,000 to \$50,000, and revise Category Three lower category from \$35,00.01 to \$50,00.01 and added sentence clarifying purchases may not be divided to fall into a lower category;
4. Section 2.01 provides authority for the Director of Finance and Administration to join in cooperative purchasing ventures;
5. Section 2.02 move “Request for Proposals” to fourth bullet, matching order of the introductory sentence.
6. Section 2.03(4) removed MBE from the list of factors potentially considered.
7. Section 2.04 Transactions exempt from competitive procurement:
 - a. Revised bullets from letters to numbers for more consistent formatting
 - b. #8 added refund of surety bonds
 - c. #11 added ‘deductibles’ to the list of insurance costs
 - d. #18 added clause to include “anticipated litigation”;
 - e. #23 added clause to clarify inclusion of “website design”;
 - f. #33 added software licenses for existing software
 - g. #34 added credit card processing fees
8. Section 2.04(4) added this section providing for District participation in Cooperative Purchase Programs (e.g., GSA Advantage);
9. Section 2.04(5) added this section (5) providing for District participation in Online Marketplaces (e.g., govdeals.com);
10. Added new Section 2.07 adding detail regarding approval of Change Orders based on Board discussion last month, and revised subsequent section numbers;
11. Section 2.10(1) added language stipulating two signatures (Board + executive staff) required on any transaction between the District and a Board member;
12. Section 2.11 added vendor/contractor requirement to ensure offers are made without collusion.
13. Section 2.12 revised legal review threshold from > \$35,000.01 to > \$50,000; and
14. Sections 6.0, 7.0, and 8.0 section numbers were revised to correct an earlier typographical error.

A marked-up final draft of our revised Procurement Policy is attached for your review. I believe the revised policy is an improvement; therefore, I offer the following motion for your consideration:

“THAT THE DISTRICT GOVERNING BOARD ratify and approve the Loxahatchee River District’s Procurement Policy as of May 26, 2016.”

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Stephen B. Rockoff
Board Member

Dr. Matt H. Rostock
Board Member

Gordon M. Boggie
Chairman

Harvey M. Silverman
Board Member

James D. Snyder
Board Member

Effective Date:

November 1, 2001

Revised – October 27, 2010

Revised – June 20, 2013

Revised – May 26, 2016



**LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT
PROCUREMENT POLICY**

1.0 EXECUTIVE SUMMARY

The District's Procurement Policy was created to establish public confidence in the procurement process, ensure that all persons involved in the procurement process are treated fairly and equitably, and provide the District with quality economical services and goods in a timely manner. The District strives to conduct the entire public purchasing process in an open and ethical manner, without conflicts of interest, favoritism, or the appearances of impropriety. To this end, while the District as an independent special district is only required to comply with certain specified procurement provisions in the Florida Statutes, such as those governing public construction, auditor selection and consultants competitive negotiation, the District has further limited itself as described in this policy to ensure fair, equitable, and open procurements. The District's Procurement Policy provides an effective central purchasing program that maximizes the value obtained by the District in the expenditure of public funds through free and open competition between the most qualified, responsive and responsible persons or firms interested in providing necessary goods and services to the District in a timely manner. As the District continues to grow, the need may arise and the District reserves the rights to waive, review, supplement, or rescind any policies or portion of the District's Procurement Policy from time to time as it deems appropriate. District Personnel will be notified of such changes to the District's Procurement Policy as they occur. This manual shall serve as a general guide, but specific questions or concerns related to construction contracts which are not addressed here should be directed to the Purchasing Principal. If necessary, Purchasing Principal will seek guidance from relevant Department Directors and/or the Executive Director.

1.01 AUTHORITY

The authority to procure and pay for goods or services for the District rests with the Executive Director and is carried out by either the Deputy Executive Director for all capital purchases or the Purchasing Agent under the supervision of the Director of ~~Operations~~ Finance and Administration for all other purchases in accordance with applicable laws, rules, regulations, policies and procedures relating to the expenditures of public funds. The Purchasing Principal is the authorized representative of the District to procure materials for the District. In the Purchasing Agent's absence, the Warehouse Coordinator may procure materials on the District's behalf.

Before entering into any agreement, contract or arrangement that obligates the District to pay a sum of money or otherwise perform in some manner, proper purchasing procedures must be followed in accordance with the District's Procurement Policy. No person, unless authorized by the Executive Director or Board, may make purchases or enter into any contract involving the use of District funds. The District's Board will not after-the-fact approve unauthorized purchases or contracts. Further, any person who intentionally (or knowingly) abrogates the District's policies and procedures may be held personally liable and accountable for any and all indebtedness and other incurred obligations arising from his/her actions.

1.02 DEFINITIONS

- 1) Best – shall mean the highest overall value to the District based on objective factors that include, but are not limited to, price, quality, design, and workmanship
- 2) Board – shall mean the Governing Board of the District.
- 3) Change Order – Change Order is a written order amending an existing Purchase Order or Contract to correct errors, omissions, or discrepancies, to cover acceptable overruns and freight costs, to expand or reduce the scope of goods or services ordered, to expand or reduce contract duration, or to direct other changes in contract execution to meet unforeseen field, emergency, climatic, regulatory or market conditions.
- ~~3~~4) Competitive Selection – shall mean the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
- ~~4~~5) Continuing Contract – A contract that allows for incremental execution using individual task orders.
- ~~5~~6) Contract – Means (a) a deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; (b) any type of agreement regardless of what it is called for the procurement of goods, services, consultant services, or construction; and (c) a purchase order.
- ~~6~~7) District – shall mean the Loxahatchee River Environmental Control District, a special district created by the Florida Legislature under Chapter 71-822, Special Acts of Florida 1971 and restated by codification in Chapter 2002-358, Laws of Florida.
- ~~7~~8) Electronic posting or electronic post – shall mean the noticing of solicitations, or other matters related to procurement on a centralized Internet website designated by the District for this purpose.
- ~~8~~9) Emergency Purchase – An expeditious purchase of goods, services, consultant services and/or construction to reduce an imminent or existing threat to the health, safety or welfare of persons or property within the District, as provided for in Section 2.06.
- ~~9~~10) Invitation to Bid or ITB – shall mean a written or electronically posted solicitation for competitive sealed bids for the purchase of goods, services, and/or construction. The invitation for bid is used when the District is capable of specifically defining the scope of work for which the contractual service is required or when the District is capable of establishing precise specifications defining the actual commodity or group of commodities required.
- ~~10~~11) Invitation to Negotiate or ITN – shall mean a written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of goods or services.
- 12) Purchasing Principal – shall mean the Deputy Executive Director, or his/her designee for all capital procurements and procurement of CCNA (e.g., professional architectural, engineering, landscape architectural, or surveying and mapping) services, and the Purchasing Agent or his/her designee for all other procurements.

- | ~~11~~13) Request for Information or RFI – shall mean a written or electronically posted request made by an agency to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted by the District in the form of a binding contract.
- | ~~12~~14) Request for Proposal or RFP – shall mean a written or electronically posted solicitation for competitive sealed proposals for goods, consultant services, and/or other services. A Request for Proposals is used when it is not practicable for the District to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the District is requesting that a responsible vendor propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. Evaluation of a proposal or response is based on prior established criteria which involves more than price. The RFP shall provide the evaluation criteria and state the relative importance of price and applicable evaluation criteria.
- | ~~13~~15) Request for Quote or RFQ – shall mean an oral or written informal request for written pricing or services information from a vendor for goods or services.
- | ~~14~~16) Responsible vendor or bidder – means a vendor or bidder who has capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
- | ~~15~~17) Responsive bid or responsive proposal or responsive reply – means a bid, proposal, or reply submitted by a responsible vendor that conforms in all material respects to the solicitation.
- | ~~16~~18) Responsive vendor or bidder – means a vendor or bidder that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.
- | ~~17~~1) ~~Purchasing Principal shall mean the Deputy Executive Director, or his/her designee for all capital procurements and procurement of CCNA (e.g., professional architectural, engineering, landscape architectural, or surveying and mapping) services, and the Purchasing Agent or his/her designee for all other procurements.~~
- | ~~18~~19) Sole source – A sole source (aka single source) purchase exists when research has determined there is only one potential vendor for the good or service.
- | ~~19~~20) Substitution – shall mean a shipment of an item that materially conforms to the specifications, but is technically different from the item bid.
- | ~~20~~21) Warehouse Coordinator – The Warehouse Coordinator is the person currently holding the Warehouse Coordinator position with the District or his/her designee.

2.0 COMPETITIVE SOLICITATION REQUIREMENTS

The District will comply with the competitive solicitation requirements of:

- Auditor Selection provided for in Section 218.391 of the Florida Statutes;
- Public Construction/Works provided in Section 255.20 of the Florida Statutes; and
- Consultants' Competitive Negotiation Act provided in Section 287.055 of the Florida Statutes.

District staff will endeavor to comply with the fundamental premise of fairness through implementation of the purchasing policy. Unless otherwise provided by law as cited above, competitive solicitation shall be used for the purchase of goods and services in accordance with the following process:

Competitive Threshold Category	Purchase Dollar Amount (per item)	Process Requirement
Category One	\$0 - \$5,000	Single Quote or Relevant Pricing Information
Category Two	\$5,000.01 - \$3550 ,000	Three Competitive Written Quotes (RFQ)
Category Three	\$3550 ,000.01 or more	Competitive Selection – ITB, ITN, RFI, RFP

The above chart represents the minimum procurement process requirements and the Purchasing Principal shall have discretion to determine whether a good or service requires a more comprehensive process (i.e. a determination that a particular good or service in Category One or Two requires additional quotes, a competitive sealed bid or RFP.) Purchases may not be divided into multiple transactions to fall into a lower Competitive Threshold Category.

The submittal of any verbal quote, written quote, response to bid or RFP constitutes an offer by the vendor.

2.01 OBTAINING QUOTES

- 1) For purchases of goods or services in Category One, the Purchasing Principal shall obtain at least one quote or relevant pricing information. Quotes may be obtained by any employee, but must be forwarded with the requisite work order to the Purchasing Principal for review and processing.
- 2) For purchases of goods or services in Category Two, the Purchasing Principal shall obtain through a request for quotes at least three written quotes. Each written quote should detail the quantity and description of the item purchased. Vendors must complete and return the written quote within the designated time period. The Purchasing Principal will then review the quotes and obtain any necessary employee input relating to which vendor has submitted the best, responsive, and responsible quote meeting the specifications. Written quotes must have the name and signature of the individual person providing the quote.

a. EXCEPTIONS: see Section 2.04

3) All purchase orders will be processed in accordance with Sections 2.0-2.03 to the lowest and/or best, responsive, responsible vendor meeting the specified requirements.

4) ~~Substitutions~~: Substitution requires the approval of the Purchasing Principal prior to shipment. Any products delivered that do not meet specification, or substitute products shipping without prior approval, will be returned to the vendor at the vendor's expense. When a shipment or product is returned, the vendor must make immediate replacement with acceptable merchandise or the District may seek all available remedies for default.

4)5) The Director of Finance and Administration has the authority to join with other governmental entities in cooperative purchasing ventures when the best interests of the District would be served.

2.02 COMPETITIVE SELECTION

The minimum procurement process for acquiring equipment, supplies, or service with a cost in Category Three is through invitation to bid ("ITB"), invitation to negotiate (ITN), request for information (RFI), or the request for proposals (RFP) process.

1) Invitation to Bid – Unless otherwise provided by law, the District shall publicly advertise an invitation to bid no less than ten (10) calendar days prior to the bid opening. The invitation to bid shall include a detailed description of the goods or services sought; the time and date for the submittal of sealed bids; the time and date of the public opening of submitted bids; the date for the District to award the bid; all contractual terms and conditions applicable to the contractual services or goods sought; and the criteria to be used by the District to determine the award of the bid. The public notice shall also include a reference to the protest provisions set forth in Section 2.02(14).

~~2) Request for Proposals – Unless otherwise provided by law, the District shall publicly advertise an RFP no less than fourteen (14) calendar days prior to the proposal opening. The request shall include a detailed description of the services and/or qualifications sought; the time and date for the submittal of proposals; the date for the District to select a proposal; all contractual terms and conditions applicable to the contractual services sought; and the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability of the proposal. The public notice shall also include a reference to the protest provisions set forth in Section 2.02(14).~~

3)2) Invitation to Negotiate – see Section 2.03.

3) Request for Information – Unless otherwise provided by law, the District shall publicly advertise an RFI no less than fourteen (14) calendar days prior to the response opening. The request shall include a description of the information sought; the time and date for the submittal of responses; and the date for the District to review the responses. Responses to these requests are not offers and may not be accepted by the District in the form of a binding contract. Responses for these requests may be used by the District in determining its needs with regard to the good or service and in developing ITB, ITN, or RFP related to the purchase of the good or service.

4) Request for Proposals – Unless otherwise provided by law, the District shall publicly advertise an RFP no less than fourteen (14) calendar days prior to the proposal opening. The request shall include a detailed description of the services and/or qualifications sought; the time and date for the submittal of proposals; the date for the District to select a proposal; all contractual terms and conditions applicable to the contractual services sought; and the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability of the proposal. The public notice shall also include a reference to the protest provisions set forth in Section 2.02(14).

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- 5) Bid Packages – Bid packages or requests for proposal shall be prepared with the appropriate terms and conditions and detailed specifications, including items to be bid, units, and total (or estimated) quantity desired, instructions for bidding, delivery information, and any special requirements for bidding. Assigned dates and time for pre-bid meetings, if any, and for the public bid opening shall also be included. If the pre-bid conferences are mandatory, a representative from the bidder's firm shall be in attendance or its bid will be rejected. Bids and RFPs shall be publicly opened and read at the time designated in the documents. The timing of the release of sealed bids/proposals, as public records, will be in accordance with applicable law.
- 6) Bid/Proposal Submissions – A Bid/Proposal must be submitted on the District's forms, signed by a legal officer of the company, and provide all requested information; otherwise the Bid/Proposal is subject to being rejected.

FAILURE TO PROPERLY EXECUTE THE OFFICIAL SIGNATURE PAGE OF THE BID/PROPOSAL MAY RESULT IN AUTOMATIC DISQUALIFICATION OF THE BID/PROPOSAL.

The entire bid/proposal, including cover letter, all instructions, addenda, if any, and actual bid form must be returned intact. Further, all bids/proposals returned must be in envelopes, sealed, and clearly marked on the outside "SEALED BID" or "SEALED RFP." Failure to read or comply with the bids or RFPs general information will in no way relieve the bidder(s) from their liabilities arising in the bids/RFPs.

Any questions to an ITB or RFP must be provided in writing in accordance with the ITB or RFP requirements. All written questions shall be answered in writing and provided to all bidders/proposers in the form of addenda. All addenda issued shall be deemed part of the ITB or RFP.

- 7) Specifications – Manufacturer's names, trade names, brand information and/or catalog numbers listed in a specification are for information and establishment of quality level desired and are not intended to limit competition unless the bid so stipulates. When the bid allows equal or equivalent products that conform to the required specifications, indicate on the bid form the manufacturer's name, model or catalog number as may be required. Submit with your bid complete descriptive literature and/or specifications as well as a detailed explanation of how the proposed items meet the specification. The District reserves the right to determine what is equal or equivalent. Bids which do not comply with these requirements are subject to rejection. If the bidder fails to name another equal or equivalent item(s), it will

be assumed that the bidder is bidding on, and will be required to furnish, goods identical in every respect to the bid standard. Only one alternate per item number as close to specifications as possible will be allowed. If more than one alternate on an item is submitted, the District will only consider one alternative that it determines is equal or equivalent and the remaining alternatives will not be considered.

All supplies and equipment offered and furnished must be new and of current production unless the request for product and/or bid specifically authorizes the use of used or recycled items. Remanufactured or reconstructed items are not considered new. In cases where the District requests bids for new equipment employing trade-ins or used equipment, a trade-in price quotation will be requested for the trade-in and separate price quotation without trade-in for the requested equipment. The District reserves the right to purchase equipment either with or without trade-in.

All goods called for in the bids or RFPs shall be delivered in good order F.O.B. destination, freight prepaid, inside delivery, within the time specified. Packing list must accompany all shipments.

- 8) Bid Bond/Performance and Payment (Public Construction) Bond – When bid bonds are required, the bid must be accompanied by a certified check or cashier’s check, treasurer’s check, or bank draft of any national or state bank (personal or company checks are not acceptable), or bid bond in the amount as specified in the bid documents.

The bid deposit must be made payable to the District as evidence of good faith and ensuring that the successful bidder will execute a contract in accordance with the terms, conditions and prices contained in the bid; and further ensuring that the successful bidder will provide a performance bond and payment bond within thirty (30) calendar days from the date of award of the contract, issued by a company qualified as a surety company to do business in the State of Florida. Such bond shall be for 100% of the contract amount. The bond shall extend as a guarantee bond for one year from the date of acceptance of the completed work. Should the successful bidder fail to provide such performance and payment bond within the prescribed time, the bid bond amount submitted with the bid shall be forfeited to the Board as liquidated damages.

Unless otherwise specified in the ITB, bid deposit checks or bonds (if requested) will be returned to the successful bidder following acceptance of a signed contract and receipt of the Public Construction Performance and Payment Bond. Bid deposit check and bonds (if requested) posted by the unsuccessful bidders will be released in accordance with the timeframes provided in the ITB.

Bids received without a bid deposit or with a bid deposit in an amount less than the required will be deemed non-responsive.

- 9) Bid/Proposal Selection – The District may select a bid and/or proposal upon any relevant criteria to the extent the invitation and/or request clearly provide the applicable evaluation criteria and state the relative importance of each. If the contract is to be awarded based on price, the contract must be awarded to the lowest qualified, responsible, responsive bidder/proposer in accordance with the applicable District resolution and applicable contract

documents. This Section does not restrict the right of the District to reject the low bid of a nonresponsible or nonresponsive bidder and to award the contract to the next highest ranked qualified and responsive bidder and/or the right of the District to reject all bids and rebid the project or elect not to proceed with the project. The Board reserves the right to waive minor formalities in any bid/proposal and to accept any bid/proposal which they consider to be in the best public interest. Once the bids and/or proposals are evaluated, the bids, proposals, and recommendations are forwarded to the Board for review, approval, and award.

The following is a listing of some common mistakes/problems that may result in bids being rejected. This is only a partial listing, therefore, the General Conditions and Special Terms and Conditions should be thoroughly reviewed before submitting a bid.

- a. Document not properly signed by an appropriate official.
- b. Failure to fill out the entire bid form in ink or typewritten.
- c. Failure to initial price changes.
- d. Taking exceptions to terms and conditions.
- e. Failure to meet the minimum requirements of the specifications.
- f. Failure to provide bid security, when required.
- g. Failure to provide all required information/documentation and complete all forms.
- h. Failure to deliver the bid in time to the proper location.
- i. Failure to sign and return all addenda, which have been issued.
- j. Failure to attend mandatory pre-conferences.

Awards will be made to the lowest and best responsive and responsible bidder as determined by the Board. The Board's decision will be final and conclusive.

10) Request to Withdraw Bid/Proposal – A request for withdrawal will be granted if received by the District in writing at any time before the bid opening. A request for withdrawal, if received by the District in writing at any time before execution of a contract with the bidder/proposer, may be granted by the Board.

11) Tie Bids – Unless the Bid or Request for Proposal stipulates criteria for determination of an award for tie bids the criteria below will be used when two or more vendors submit the exact same dollar amount as their bid offer, or if two or more firms are deemed equal with the respect to price, quality and service. In order of importance, the following criteria will be used to break a tie:

- a. Drug Free Work Place – In accordance with Section 287.087, Florida Statutes, a drug-free workplace shall be given preference. In order to receive preference, a signed certification of compliance must be submitted with the bid response.
- b. Local Preference – When prices, quality and other considerations are essentially identical, the bidder with a place of business in Martin or Palm Beach County may be given preference.
- c. Toss of the Coin.

- 12) Bidders Liability – Should any bidder fail to enter into any contract with the District on the basis of the submitted bid by said bidder, bidder acknowledges that bidder shall be liable to the District for the costs to re-bid as well as the difference between such bid price and the price the District pays to secure the merchandise from another source. Failure to pay said amount to the District upon demand shall result in the bidder being debarred and therefore, ineligible to submit Bids, proposals, or quotes to the District for a period of not less than three (3) years from date of infraction.
- 13) Tax Savings Program – In order to limit the Florida Sales Tax upon a project and pursuant to Florida Statutes, and particularly Rule 12 A-1.094 (3), Florida Administrative Code, purchases under this procedure shall be exempt from competitive procurement.
- a. The District shall issue a Certificate of Entitlement to the Contractor certifying: (1) that the materials and supplies purchased will become part of a public facility; and (2) that the District will be liable for any tax, penalty or interest due should the Department of Revenue later determine that items purchased do not qualify for exemption.
 - b. District shall provide to Contractor a requisition form to be utilized for purchase of those supplies, materials and equipment (SME) described herein. District reserves the right to, at any time during the term of the project, add to, delete from or modify the description of supplies, materials and equipment described herein, at District's sole discretion.
 - c. Requisition forms will only be issued for the SME described herein. Such forms shall be prepared and submitted by the Contractor to the District. Such form shall be submitted in sufficient time for review and consideration by District so that the materials may be acquired directly by District and delivered to the project site in sufficient time to assure its availability at the time that it is needed and so as not to delay progress of the project. It shall be the responsibility of contractor to assure that such requisition forms are submitted to District's representative for approval by District with sufficient time for the District's review and processing, such that no delay shall impact the need for or order of the item. It shall be the responsibility of Contractor to assure the subcontractors, sub-subcontractors, specialty contractors and others have the materials sought to be requisitioned on hand at the time required for installation in accordance with the project schedule.
 - d. District will issue Purchase Orders to the appropriate vendors as designated and shown upon requisition forms. A copy of the Purchase Order will be returned to the Contractor.
 - e. Upon delivery of the material purchased to project site, a delivery ticket shall be signed by a representative of District and by doing so the District shall take title of the materials delivered. Delivery ticket must be attached to the invoice to District, to be forwarded through Contractor.
 - f. Invoices addressed to the District shall be submitted by the Contractor to the District in a timely manner so as to allow District to take advantage of any applicable discounts. Payment of invoices for materials purchased as described in this procedure

shall be issued by the District directly to the vendor to whom the Purchase Order was issued.

- g. Contractor shall prepare a complete list of instructions to be distributed to all applicable subcontractors with the procedures to be followed under the Sales Tax Savings Procedures. These instructions shall cover those matters hereinafter set forth.
 - h. Materials, supplies, and equipment acquired using this procedure shall be subject to the warranty provisions as required by the Contract between the Contractor and the District. Contractor acknowledges that District will be ordering materials for said project pursuant to the ability to benefit from the tax savings provisions of this agreement. Contractor further agrees that it shall be responsible for acceptance of delivery, storage, and installation of said products ordered by District. Further, Contractor shall be liable for all loss or damage to said products subsequent to delivery of same from the vendors/suppliers.
 - i. Foregoing procedure is for the purpose of limiting Florida Sales Tax upon the project pursuant to Florida Statutes and particularly Rule 12 A-1.094(3), Florida Administrative Code. Provisions hereof and procedures shall be construed in order to carry out the intent of the parties. Provisions hereof and procedures established hereby may be amended by District at any time, upon any indication that such change, amendment or alteration is necessary to assure non-taxable sales tax treatment of the project.
 - j. The Contractor shall be responsible for any defects, storage, delivery, and installation as set forth in the Contract Documents for any and all materials, products, and systems purchased by the District's purchase orders. The Contractor shall maintain as a part of the required Builders' Risk Insurance, or other insurances being provided, full replacement coverage for all items purchased by the District under this Sales Tax Savings Procedure.
- 14) Bid/RFP Protest Provision – This procedure applies to the resolution of all protests arising from the competitive award procedures set forth above. By submitting a bid/proposal to the District, bidders agree to the process set forth in this Section.
- a. Notice of Protest – Notice of all District decisions or intended decisions shall be by certified mail or courier services. Any person adversely affected by a bid or request for proposal shall file a notice of protest in writing, within two (2) business days from the date on the notice of the decision or actual receipt of the decision, whichever is later. A formal written protest shall be filed within five (5) business days after the protesting party files the notice of protest. No time will be added to the above time limits for mail service.
 - b. Formal Written Protest – The formal written protest shall state with particularity the facts and law upon which the protest is based. The formal written protest shall be printed or typewritten and contain:
 - 1. The name and address of the person or firm filing the protest and an explanation of how they are adversely affected by the District decision or intended decision;
 - 2. Identification of the procurement matter at issue.

3. A statement of how and when the notice of District decision or intended decision was received;
 4. A statement of all issues of disputed material fact and, if there are none, a statement so indicating;
 5. A concise statement of the ultimate facts alleged;
 6. A statement of the applicable law, rule, statute, or other authority upon which the protest is based and which entitle the protestor to relief;
 7. A specific demand for relief; and
 8. Any other information material to the protest.
- c. Filing Notices of Protest and Formal Protests – All notices of protest and formal protests shall be filed with the District’s Executive Director. A protest is not timely filed unless both the written notice of protest and the formal protest have been received by the District within the prescribed time limits. Failure to file a protest within the time prescribed by this Section shall constitute a waiver of all claims.
- d. Stay of Award – Upon receipt of a formal written protest which has been timely filed, the bid solicitation or contract award process shall be stayed until the subject of the protest is resolved by final agency action, unless the District’s Executive Director, with the concurrence of the Board, sets forth in writing particular facts and circumstances which require the continuation of the solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare. Notice that a contract award has been stayed shall be given by U.S. Mail or hand delivery or courier service to all whom submitted qualified bids/proposals. Upon receipt of a timely formal protest of a decision or intended decision to award or reject all bids, qualifications, or proposals, notice shall be given by U.S. Mail or hand delivery or courier service to all bidders for that contract.
- e. Resolution of Formal Protest – Upon the written request of the protestor or on its own initiative, the District shall provide an opportunity for the protestor to meet with the Executive Director to resolve the protest by mutual agreement within seven (7) business days, excluding holidays, of receipt of a formal written protest. If the subject of a protest is not resolved by mutual agreement within seven (7) business days, excluding holidays, of receipt of the formal written protest, or a mutually agreed upon extension of time, the Executive Director shall certify in writing to the Board that there was no resolution and provide the protestor with a copy of the certification.
- f. Quasi-Judicial Hearing – Within seven (7) business days from receipt of written certification that there was no resolution, the protestor may provide a written request that the matter be heard before the District Board in a quasi-judicial hearing. Failure to provide a written request to the Board within seven (7) business days of notice shall constitute waiver of any protest. Upon receipt of a written request, the Board may, in its discretion, request a written response from the Executive Director, and/or schedule the matter for hearing before the Board. Within seven (7) business days from the conclusion of the hearing, the Board will provide a written final decision on the matter to the protestor.

The protestor may contest the District's decision in a court of competent jurisdiction in Palm Beach County no later than thirty (30) calendar days after receipt of notice of the District's decision, unless otherwise specified within the controlling request for proposal or qualification documents.

2.03 COMPETITIVE NEGOTIATION

For any category of services and/or goods, the District may choose to purchase the services and goods through an invitation to negotiate pursuant to the provisions below and all relevant laws. The negotiations shall be made on the best price, terms and conditions obtainable by the District to meet its needs. The District shall specify in writing and make available to prospective contractors its needs for the services and goods to be purchased prior to commencing negotiations with any vendor.

When staff determine it is in the best interest of the District to procure a good or service through competitive negotiation, staff shall make a corresponding recommendation to the Board. Upon Board approval, the District may contract by negotiation without seeking bids/proposals first. When contracting by negotiation without first seeking competitive sealed bids/proposals for services and/or goods exceeding the threshold of Category Three, the following procedures shall apply:

- 1) **Written Request** – The Purchasing Principal shall submit a request in writing to the Board detailing the necessity to contract by negotiation, the proposed steps to be followed by the District in negotiating the contract, and the proposed vendors that will be used in the negotiations. The Board's intended decision to contract by negotiation shall be posted in the Purchasing Principal's office.
- 2) **Public Notice** – The District shall publicly advertise each instance in which services or goods are being sought and provide a general description of the project/goods. The notice shall indicate how interested parties may apply for consideration and shall indicate the criteria required to be submitted in any responsive letter of interest. The public notice shall also include a reference to the bid protest provisions set forth in Section 2.02(14).
- 3) **Letter of Interest** – Pursuant to the public notice, a firm desiring to provide services for a project shall timely submit a letter of interest containing evidence of current professional status, capabilities, adequacy of personnel, past record and related experience, list of sub-consultants, and other information required by the notice necessary for the District to evaluate whether the firm is qualified. For contracts for the purchase of goods, each vendor shall provide a final firm price, terms and conditions for the specific commodity/contractual service offered.
- 4) **Competitive Selection** – The Purchasing Principal or his/her designee shall evaluate each letter of interest submitted regarding qualifications and performance ability and shall conduct discussions with and may require public presentations by responding firms regarding their qualifications, approach to the project, and ability to furnish the services required pursuant to the terms of the notice. The Purchasing Principal or his/her designee shall select and list not less than three firms, in order of preference, deemed to be the most highly qualified to perform the required contractual services and/or provide the required commodity after

consideration of the factors set forth in the notice. The District may select and list less than three vendors only when there are less than three vendors which may offer the services or goods desired by the District. In determining whether a firm is qualified, the agency shall consider such factors as: ability of professional personnel; ~~certified as MBE~~; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm; financial soundness of the firm; and the volume of work previously awarded to the firm. The Purchasing Principal or his/her designee will then recommend to the Board that competitive negotiations be instituted with the firms selected. The Board may amend the Purchasing Principal's recommendations.

- 5) Competitive Negotiation – Once the Board authorizes competitive negotiations, the Purchasing Principal or his/her designee shall begin contract negotiations for the subject project with the designated firms in order of rank for fair, competitive and reasonable compensation. Should negotiations with the firm determined to be the most qualified prove unsuccessful, negotiations with that firm will be formally terminated and negotiations shall begin with the next most qualified firm on the list. Failing accord with the second most qualified firm, the District must terminate negotiations with that firm and shall then begin negotiations with the third most qualified firm. If satisfactory agreement is not reached with any of the top three ranked firms, additional responding firms shall be ranked and listed in the order of their competence and qualifications. Negotiations shall then continue beginning with the first named firm on the second list until an agreement is reached. After successful negotiations, a recommendation shall be made that the Board award the contract. The District will maintain an accurate record of the discussions held with each vendor/bidder/proposer.

2.04 TRANSACTIONS EXEMPT FROM COMPETITIVE PROCUREMENT

An exemption may be granted by the Purchasing Principal for goods or services when it is in the District's best interest and allowed by a referenced statute, rule or regulation. Typical exemptions include, but are not limited to, the following:

- 1) ~~A.~~ Real Property Acquisition, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the Board
- 2) ~~B.~~ Court-ordered fines and judgments, resulting from litigation
- 3) ~~C.~~ Exceptional disbursements as authorized by the Board
- 4) ~~D.~~ Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and charged against the appropriate budget for such fees
- 5) ~~E.~~ Cash transfers and investment transactions for fiscal management purposes, processed through the Accounting Department, and disbursed from general ledger accounts
- 6) ~~F.~~ Accrued or current liabilities already disbursed from the budget, processed through the Accounting Department, and paid from or through general ledger accounts
- 7) ~~G.~~ Debt service payments processed by the Accounting Department and charged against budgetary accounts

- ~~7)8)~~ Refund of a cash or surety bond
- ~~8)9)~~ H. Refunds of current or prior year revenues charged against budgetary accounts
- ~~9)10)~~ I. Grant disbursements to federal, state, or local government agencies, or to private groups or agencies
- ~~10)11)~~ J. Insurance including but not limited to liability, property, medical, and workers compensation insurance, deductibles, or payments from any loss fund established for such purpose
- ~~11)12)~~ K. Utilities, advertising, toll charges, gas cards, and postage
- ~~12)13)~~ L. Dues and memberships in trade or professional organizations
- ~~13)14)~~ M. Subscriptions for periodicals, advertisements, copyrighted material
- ~~14)15)~~ N. Part-time and temporary labor and employees
- ~~15)16)~~ O. Professional medical services, authorized hospitality expenses
- ~~16)17)~~ P. Job-related travel, seminars, tuition registration and training
- ~~17)18)~~ Q. Legal services, expert witnesses, court reporter services, and all other related expenses of claims, anticipated litigation, and/or litigation
- ~~18)19)~~ R. Consultant Services, as defined in Section 2.0, unless otherwise provided by law. For example, services covered by Sections 287.055 (CCNA) and 218.391 (Auditor Selection) would not be exempt from Competitive Solicitation. Anytime this exemption is utilized, a justification as to why consultant services should not or cannot be competitively solicited shall be provided to the Purchasing Principal for approval prior to entering into a contract for the service. The Purchasing Principal will determine, on an individual basis, whether the exemption is applicable.
- ~~19)20)~~ S. Title insurance, title commitments, title searches, and ownership and encumbrance searches and real estate appraisal services to determine the market value of real property
- ~~20)21)~~ T. Political lobbying services
- ~~21)22)~~ U. Transactions by Interlocal Agreement
- ~~22)23)~~ V. Art work, maps, and design services (including website design)
- ~~23)24)~~ W. Permitting fees
- ~~24)25)~~ X. Security services by off-duty law enforcement personnel
- ~~25)26)~~ Y. Camp programs including admission fees to parks, movies, entertainment venues, etc.
- ~~26)27)~~ Z. Services provided by non-profit organizations, educational institutions, governmental and quasi-governmental agencies
- ~~27)28)~~ AA. Purchases under Tax Savings Program
- ~~28)29)~~ BB. Sole source items in accordance with Section 2.04(1) below
- ~~29)30)~~ CC. Purchases which "piggy-back" on existing government contracts in accordance with Section 2.04(2) below

- ~~30)31) DD.~~ Intergovernmental purchases and agreements
- ~~32) EE.~~ Emergency purchases as noted in Emergency Purchase Section 2.06
- 33) Computer maintenance and/or software licenses for existing software
- ~~31)34) FF.~~ Credit card processing fees
- ~~32)35) FF.~~ Multiple quantities of a single item of common operational supplies.

Further, the District may grant exemptions for Public Construction projects in accordance with Section 255.20 of the Florida Statutes, including:

- 1) When a project is undertaken to repair, reconstruct or replace an existing facility, destroyed or damaged by an act of God, riot, fire, flood, accident, or other urgent circumstance and such damage or destruction creates an immediate danger to the public health or safety; loss to public or private property which requires emergency government action; or an interruption of an essential government service.
- 2) After proper public notice, the District does not receive any responsive bids or proposals.
- 3) Projects undertaken as a repair or maintenance to an existing public facility in accordance with Section 255.20 of the Florida Statutes.
- 4) Projects undertaken exclusively as part of a public education system;
- 5) If the funding source of the project 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) If the District competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.
- 7) If the Board publically notices a Board meeting in accordance with Section 255.20 of the Florida Statutes, conducts the public Board meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment.
- 8) If, pursuant to Section 255.20 of the Florida Statutes, at least 4 of the Board's members vote to find it in the District's best interest to award the project to an appropriately licensed private sector contractor, based on specific substantive criteria and procedures.
- 9) The project is subject of Chapter 336 of the Florida Statutes, County Road System.

The District has the following policies related to certain enumerated exemptions:

- 1) Sole Source:
 - a. If the Purchasing Principal determines that a service and/or good is available from a single source and the total cost is within Category One or Two, then the purchase may be excepted from procurement requirements, in writing, upon filing a written statement stating the conditions and circumstances requiring the purchase and filing the written statement in Accounting.

- b. If the Purchasing Principal determines that a service and/or good is available from a single source and the total cost is within Category Three, the purchase may be excepted from bid requirements by the Board, in writing, upon the filing of a certification by the Purchasing Principal stating the conditions and circumstances requiring the purchase. This certification shall set forth the purpose and need of the purchase and explain why the single source is the only one that will produce the desired results. The District's intended decision shall be presented to the Board on the consent agenda at the next regularly scheduled public meeting.
- c. In any case, where the District seeks to purchase from a sole source, materials for the construction, modification, alteration, or repair of any District-owned facility, the District's Board must first make the written findings required by Section 255.04 of the Florida Statutes.

2) Piggy-backing – The District may purchase services and/or goods other than Professional Services governed by Section 287.055, Florida Statutes, and procure contracts from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, competitive selection, or competitive negotiation, and which are otherwise in compliance with Florida Statutes and this policy. Piggybacking can be done when the bids submitted by the vendors to the other governmental agencies permit purchases by other agencies, the vendors agree to do so in writing, and if such purchases are to the economic advantage or best interest of the District.

3) Cooperative Purchasing Program – The District may participate in, sponsor, conduct, and/or administer a cooperative purchasing program (e.g., GSA Advantage, State of Florida Contracts, Southeast Florida Governmental Purchasing Co-Operative Group, Florida Sheriff's Association, National Joint Powers Alliance). The District may purchase goods and/or services other than Professional Services governed by Section 287.055, Florida Statutes from a Cooperative Purchasing Program if such purchase is deemed to be in the best interest of the District. Use of a Cooperative Purchasing Program is considered a *de facto* competitive selection.

2)4) Online Marketplaces (e.g., Amazon.com, govdeals.com, ebay.com): – The District may purchase goods and/or services other than Professional Services governed by Section 287.055, Florida Statutes from Online Marketplaces if such purchase is deemed to be in the best interest of the District. Use of an online marketplace is considered a *de facto* competitive selection.

2.05 CONTRACT RENEWALS AND CONTINUING CONTRACTS

- 1) Unless otherwise specified in the contract, contracts for goods and services may be renewed for an additional term not to exceed the original contract period unless the original contract period is 24 months or less, in which case the contract may be renewed for up to three one-year periods. Renewal of the contract shall be by mutual agreement in writing and shall be subject to the same terms and conditions set forth in the initial contract. If the service or good is purchased as a result of the solicitation of bids or proposals, the cost of any contemplated renewal shall be included in the invitation to bid or the request for proposals. Renewals shall be contingent upon satisfactory performance evaluation by the District.

- 2) Nothing in this Procurement Policy shall be construed to prohibit a continuing contract between a firm and the District consistent with the requirements of applicable law.

2.06 EMERGENCY PURCHASES OF SERVICES OR GOODS

Notwithstanding any other provision of this policy, emergency purchases of goods or services may be made in the event of a disruption of essential operations, or where there exists a threat to public health, welfare, safety, or when the protection or preservation of public property would not be possible through normal procurement procedures. To the extent practical under the circumstances, such emergency purchases shall be made using competent and qualified firms and include a competitive selection process.

The Purchasing Principal shall file with the Board a statement certifying the conditions and circumstances requiring an emergency purchase of goods/contractual services in excess of the threshold amount for Category Three for services/goods or for qualifying construction contracts. Statements shall be submitted within thirty (30) calendar days after the date of purchase order or contract and shall include complete details surrounding the event(s) which created the emergency. A copy of the purchase order or contract shall accompany the statement.

2.07 CHANGE ORDERS

The Executive Director is authorized to approve Change Orders under the following circumstances:

- 1) Proposed Change Order cost plus original cost is \leq \$50,000; or
- 2) Proposed Change Order cost is less than or equal to the remaining balance of Board approved contingency amount; or
- 3) Proposed Change Order reduces the dollar value of the contract; or
- 4) Emergency Purchases as defined in Section 2.06.

When these conditions are not met Board approval is required. Staff will implement the following procedures for obtaining Board approval:

- 1) For time-sensitive proposed Change Orders requiring Board approval, the proposed Change Order and supporting documentation will be emailed to individual Board members at the earliest reasonable opportunity. The email will stipulate the importance of timing and indicate a response due date.
 - a. If any Board member believes the Change Order needs public discussion prior to approval and/or believes the Change Order should not be executed as presented, then that Board member will inform the Executive Director as such via email. If a Board Member informs the Executive Director that the Change Order needs public discussion, the Change Order will not be executed until it is presented for consideration by the Board at their next regularly scheduled public meeting. If the Change Order is an urgent matter, a Special Meeting may be called.

b. If, by the response due date, no Board member indicates the Change Order needs public discussion and/or believes the Change Order should not be executed as presented, then the Executive Director will execute the Change Order, and present the Change Order and supporting documentation to the Board on the consent agenda at their next regularly scheduled public meeting.

2) Change Orders that are not time-sensitive will be presented for consideration by the Governing Board at their next regularly scheduled public meeting.

Except as otherwise provided herein, the Executive Director may authorize Change Orders to correct errors, omissions, or discrepancies in contract documents; cover acceptable overruns and freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions.

2.07-08 RESTRICTIONS ON PURCHASES:

- 1) Any person or affiliate who has been placed on the convicted vendor's list following a conviction for a public entity crime:
 - a. May not submit a bid on a contract to provide any goods or services to a public entity.
 - b. May not submit a bid on a contract with a public entity for the construction or repair of a public building or public work.
 - c. May not submit bids on leases of real property to a public entity.
 - d. May not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and
 - e. May not transact business with any public entity in excess of the threshold amount provided in Sections 287.017 for Category Two.
- 2) No person or business entity shall be awarded a contract by the District for the provision of goods or services, if that person or business entity:
 - a. Has been convicted of bribery or attempting to bribe a public officer or employee of the District, State of Florida, or any other public entity, in that officer's or employee's official capacity
 - b. Has been convicted of a conspiracy or collusion among prospective vendors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or
 - c. Has made an admission of guilt of such conduct described in subsection a and b above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record pursuant to formal prosecution.
 - d. Notwithstanding the above, a person, business entity, or officer or employee of a business entity, having been convicted of one or more of the crimes set forth above or having made an admission of guilt as set forth above shall be ineligible for the

awarding of a contract by the District for a period of five (5) years following such conviction or admission.

- 3) Any business entity controlled by or affiliated with any person or business entity ineligible for the award of a contract may also be prohibited from contracting with the District if the relationship or affiliation is such that in the reasonable opinion of the Purchasing Principal, the person or business entity, by reason of the relationship to the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract.

2.08-09 **OTHER CONSIDERATIONS**

Equal Employment and Educational Opportunities: It is the sole responsibility of the bidder to comply with provisions of the Immigration Reform and Control Act of 1986. The District hereby stipulates and affirms its policy of offering Equal Employment and Educational Opportunities for all persons regardless of race, creed, color, sex, national origin, age or handicap. The failure of any contractor or supplier to the District to comply with the terms of this Equal Employment Opportunity Policy will subject any contract or purchase order to revocation.

2.09-10 **CONDUCT**

- 1) Conflict of Interest – Any award made by the District is subject to provisions of Chapter 112, Florida Statutes. All bidders must disclose with their bid, the name of any officer, director, or agent who is also an employee of District. Further, all bidders must disclose the name of any District employee who owns directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches. Any concerns regarding this must be given to the Purchasing Principal prior to bid submittal for clarification and further direction. Any transaction between the District and a Board member and/or a business substantially owned by a Board member shall require two signatures (a minimum of which shall be one Board member not involved in the transaction).
- 2) Lobbying – After the issuance of any bid/RFP, or during renegotiation of any existing contract, no prospective vendor, bidder, their agents, representatives, or persons acting at the request of such vendors shall contact, communicate with or discuss any matter relating to the bid/RFP or renegotiations with any District officer, agent, Board member, or employee other than the Purchasing Principal or his/her designee. This prohibition ends upon execution of the final contract or when the bid/RFP has been cancelled or the renegotiation is terminated. Renegotiation is deemed to have commenced upon a vote of the Board or written notice from the Purchasing Principal. A vendor who violates this provision may be subject to one or more of the following sanctions:
 - a. Written warning and reprimand;
 - b. Termination of contract;
 - c. Debarment or suspension as provided in Section 87.0.

- 3) Gifts and Gratuities – The process of public purchasing should be conducted in such a manner that the integrity of the competitive selection process is not compromised, and therefore the District strives to eliminate any possibility of, or even the appearance of, improper business relationships. In this regard, the District prohibits the acceptance of gratuities, gifts, or other favors with a monetary value exceeding \$100.00 and/or that might give rise to doubts of impartiality.

2.11 RESPONSIBILITIES OF DISTRICT AND VENDOR/CONTRACTOR

- 1) District – Prior to the execution of any contract or approval of any purchase order, the Purchasing Principal shall confirm the availability of funds related to the transaction.
- 2) Vendor/Contractor – Every vendor/contractor with the District is responsible for:
 - a. Notifying the District of any changes, name, address, products/services, or other pertinent information, via letter or completed W-9 Form.
 - b. Reading and understanding each page of the Quote, Bid or Request for Proposal.
 - c. Double-checking its offer prior to submittal.
 - d. Executing the signature page of the bid document, RFP or quote.
 - e. Ensuring that its offer is made within the prescribed time limits and to the proper address.
 - e.f. Ensuring that its offer is made without collusion.
 - f.g. Providing all information as required in the Request for Proposal, Bid, or the Quote.
 - g.h. If an award is made to your firm, make delivery as specified.
 - h.i. Contact the Purchasing Principal should you have any questions.

2.12 LEGAL REVIEW OF ALL CONTRACTS

The District's legal counsel shall review and approve the form of all contracts in excess of \$3550,000.01 prior to executing the same.

3.0 TERMINATION OF CONTRACT; RESCISSION OF AWARD

Termination of any contract or rescission of award must be made by the awarding authority; and in all cases where the Board takes action, Board will consider the Purchasing Principal's recommendation prior to termination or rescission. The Purchasing Principal will examine the circumstances and reasons behind the breach of contract, or other reasons for rescission or termination, consult with legal counsel, and determine if there is a solution possible in the situation. If a breach of contract occurs, or rescission of award or termination of the contract is necessary, the Purchasing Principal may suspend or debar the subject vendor for failure to perform under the terms of the District's Purchasing Policy in accordance with Section 4.0.

4.0 SUSPENSION OR DEBARMENT

- 1) Suspension – After consultation with legal counsel, the Purchasing Agent is authorized to suspend a person or entity from consideration for award of contracts if the Purchasing Principal has adequate documented evidence to demonstrate that the person or entity has engaged in any activity which is grounds for suspension or debarment. The suspension period shall be for a period not to exceed 12 months from the date of the Purchasing Principal's discovery of the most recent incident giving rise to the suspension.
- 2) Debarment – After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard by the Purchasing Principal, the Purchasing Principal, after consulting with the legal counsel, is authorized to debar a person or entity for cause from consideration for award of contracts. The debarment shall be for a period of not more than five years from the date of the purchasing official's discovery of the most recent incident giving rise to the debarment. Debarment may be as to all contracting opportunities, or may be only as to certain types or sizes of projects or contracts, depending on the cause(s) and severity of the reason(s) for debarment.
- 3) Any business entity controlled by or affiliated with any person or business entity ineligible for the award of a contract may also be prohibited from contracting with the District if the relationship or affiliation is such that, in the reasonable opinion of the Purchasing Principal, the person or business entity, by reason of the relationship to the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract.
- 4) Causes for suspension and debarment include:
 - a. Conviction of an officer of the entity for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract, or a civil or criminal final judgment of violation of state or federal whistleblower laws;
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a District contractor;
 - c. Conviction under state or federal statutes arising out of the submission of bids or proposals;
 - d. Refutation of an offer by failure to provide bonds, insurance, or other required certificates within a reasonable time period;
 - e. Refusal to accept a purchase order, agreement, or contract provided such order was issued timely and in conformance with the offer received.
 - f. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Principal to be so serious as to justify debarment action;
 - g. Deliberate failure without good cause to perform in accordance with the specifications and/or budget or within the time limit provided in the contract;

- h. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure to perform or unsatisfactory performance was caused by acts within the control of the contractor;
- i. A documented history of significant deviation from the contract specifications, engineering standards, design or material requirements or safety regulations;
- j. Any other cause the Purchasing Principal determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause listed above or provided for in general law;
- k. For violation of the Conduct provision set forth in the District's Procurement Policy.
- l. For violation of the Public Records provision set forth in the District's Procurement Policy.
- m. For violation of any applicable ethics standards, including the ethical standards set forth in Chapter 112 of the Florida Statutes, or in relevant grant funding requirements.

5) Process for Suspension or Debarment

- a. Notice – The Purchasing Principal shall issue a written decision to debar or suspend which states the reasons for the action taken, the period that the suspension or debarment shall be in effect, and any right to administrative review.
- b. Reinstatement – After suspension or debarment, a person or entity may not contract with the District until reinstated by the Purchasing Principal or by the administrative review process. The person or entity must supply information and reasonable documentation indicating that the conditions causing the suspension or debarment have been rectified. As a condition of reinstatement, the Purchasing Principal may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the District. The reinstatement determination must be in writing, inform the person or entity of any conditions of reinstatement, and inform of any rights to administrative or judicial review and be sent via certified mail to the suspended, debarred, or reinstated person or entity.
- c. Final Decision – A decision to suspend or debar shall be a final and conclusive decision unless within ten (10) calendar days of the decision, the debarred or suspended person or entity files a written notice of appeal to the Executive Director. The written notice of appeal to the Executive Director shall state with particularity the facts and law upon which the appeal is based. The written notice of appeal to the Executive Director shall be printed or typewritten and contain:
 - 1. The name and address of the person or firm filing the appeal;
 - 2. A statement of how and when the notice of District decision or intended decision was received;
 - 3. A statement of all issues of disputed material fact, and if there are none, a statement so indicating;
 - 4. A concise statement of the ultimate facts alleged;

5. A statement of the applicable law, rule, statute, or other authority upon which the appeal is based and which entitle the appellant to relief;
6. A specific demand for relief; and
7. Any other information material to the appeal.

Upon receipt of a timely appeal, the Executive Director, may, at his/her discretion, request a written response from the Purchasing Principal. The Executive Director has the discretion to call a meeting of the Purchasing Principal and the suspended or debarred vendor to resolve the matter. Within ten (10) calendar days from the receipt of a timely appeal, the Executive Director shall issue a written decision to uphold, reverse, or modify the Purchasing Principal's decision of suspension or debarment. The Executive Director's decision shall be a final and conclusive decision unless within ten (10) calendar days of the decision, the debarred or suspended person or entity files a written notice of appeal to Board in conformance with the requirements set forth above. Upon receipt of a timely appeal, the matter shall be scheduled for a quasi-judicial hearing before the Board. Within twenty (20) calendar days following the hearing before the Board, the Board shall issue a written decision on the matter. After the conclusion of this administrative process, the suspended or debarred vendor may commence a timely action in court of competent jurisdiction, in accordance with applicable law.

65.0 PUBLIC RECORDS

Any vendor/contractor providing goods or services to the District must maintain and provide access to any records the vendor has related to the provision of those goods and service to the District. A vendor's/contractor's failure to comply with this provision of the District's Procurement Policy will be deemed a default and may provide cause for termination of the contract and debarment.

76.0 COMPLIANCE WITH THE PROCUREMENT POLICY:

By providing any good or service to the District, the vendor/contractor agrees to comply with the provisions of this Procurement Policy. Failure of a vendor/contractor to comply with the terms of this procurement policy may be deemed as a default or breach of contract and provide cause for termination of the contract.

87.0 LEGAL CITATIONS

Section 1.01

Art. VII, §1, Fla. Constitution limits the expenditure of tax revenue to public purpose. *Brown v. Winston*, 197 So. 543 (Fla. 1940); 1958 Op. Att’y Gen. Fla. 085-305 (Nov. 10, 1958).

Fair and equitable process. *Similar to* §287.001, Fla. Stat. (2012)

Section 1.0302

“Best” Similar to §287.012 (4), Fla. Stat. (2012)

“Competitive Selection” Similar to §287.012 (6), Fla. Stat. (2012)

“Electronic posting or electronic post” Similar to §287.012 (10), Fla. Stat. (2012)

“Invitation to Bid” Similar to §287.012 (15), Fla. Stat. (2012)

“Invitation to Negotiate” Similar to §287.012 (16), Fla. Stat. (2012)

“Request for Information” Similar to §287.012 (21), Fla. Stat. (2012)

“Request for Proposal” §287.012 (22), Fla. Stat. (2012)

“Request for Quote” Similar to §287.012 (23), Fla. Stat. (2012)

“Responsible vendor or bidder” Similar to §287.012 (24), Fla. Stat. (2012)

“Responsive bid” Similar to §287.012 (25), Fla. Stat. (2012)

“Responsive vendor or bidder” Similar to §287.012 (26), Fla. Stat. (2012)

“Sole source” *Accela, Inc. v. Sarasota County*, 993 So. 2d 1035, 1041 (Fla. 2d DCA 2008) (Similar provisions in Sarasota County code were reviewed in this case).

Section 2.0

Auditor Selection §218.391, Fla. Stat. (2012)

Public Construction/Works §255.20, Fla. Stat. (2012)

Consultants’ Competitive Negotiation Act §287.055, Fla. Stat. (2012)

Section 2.02

Performance and Payment Bond - §255.05, Fla. Stat. (2012)

Public Records Exemption - §119.07 (1), Fla. Stat. (2012), provides that sealed bids/proposals are not subject to the public records production until such time as the District provides notice of a decision or intended decision or within ten (10) calendar days after bid or proposal opening, whichever is earlier. The 10-day period does not include the date of the notice or opening.

Reject all bids - *Webster v. Belote*, 138 So. 721 (Fla. 1931); *Department of Transportation v. Grove-Watkins Constructors*, 530 So. 2d 912 (Fla. 1988) (FDOT is empowered to reject any and all bids in the absence of fraud, collusion, bad faith or arbitrary action); *Couch Construction Co. v. Department of Transportation*, 361 So. 2d 172 (Fla. 1st DCA

1978)(FDOT has wide discretion to reject all bids and to call for new bids for public contracts, but in making such a determination, FDOT cannot act arbitrarily). “Even if the public entity makes an erroneous decision about which reasonable people may disagree, the discretion of the public entity to solicit, accept and or reject contract bids should not be interfered with by the courts, absent a showing of dishonesty, illegality, fraud, oppression or misconduct.” *Paul Jacquin & Sons, Inc. v. City of Port St. Lucie*, 69 So. 3d 306, 308 (Fla. 4th DCA 2011), reh'g denied (Oct. 6, 2011); *City of Cape Coral v. Water Services of Am., Inc.*, 567 So. 2d 510, 512 (Fla. 2d DCA 1990 (i.e. Bidder relies on the representations of the City namely that a bid would not be rejected because the contractor was not licensed, then contractor was the lowest responsive bidder the City attorney states City cannot award to non-licensed person - The court ruled the bidder gets its preparation costs.) *Gulf Real Properties, Inc. v. Dep't of Health & Rehabilitative Services*, 687 So. 2d 1336, 1337 (Fla. 1st DCA 1997) (after a protest is filed an entity will reject all bids).

Incomplete packages or minor abnormalities - Whether material or immaterial turns on whether providing the bidder the waiver would give substantial advantage over other bidders. *Tropabest Foods, Inc. v. State Department of General Services*, 493 So. 2d 50 (Fla. 1st DCA 1986).

Drug Free Workplace - §287.087, Fla. Stat. (2012) Local Preference – Example §255.04, Fla. Stat. (2012)

Tax Saving Program – Chapter 212, Fla. Stat. (2012)

Protest *Similar to* §120.057(3), Fla. Stat. (2012)

Section 2.03

Factors to consider - §287.055, Fla. Stat. (2012)

Section 2.04

Public Construction exemptions - §255.20, Fla. Stat. (2012) Sole Source - §255.04, Fla. Stat. (2012)

Piggy- backing §189.4221, Fla. Stat. (2012).

Section 2.05

Continuing Contract §287.055(2)(g), Fla. Stat. (2012)

| Section 2.0708

Public Entity Crime - §287.133, Fla. Stat. (2012)

Section 2.09

Ethics – §112.313, Fla. Stat. (2012)

| Section 65.0

Public Records – Chapter 119, Fla. Stat. (2012); *Similar to* §287.058(1)(c), Fla. Stat. (2012)