

CHAPTER 5 PROCUREMENT REGULATIONS

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PREFACE

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

For ease of reference, these Procurement Regulations are organized by Part numbers that correspond to the numbered Parts of the Procurement Code. To the extent practicable the Sections of these Procurement Regulations are numbered the same as the related Procurement Code Section. For example, Section 63G-6a-102 of the Procurement Code describes the purposes of the Procurement Code, and P&P Section 5-102 describes the purposes of this Chapter.

All District expenditures must be properly appropriated as described in P&P Chapter 2. Once a District expenditure has been properly appropriated, this Chapter of the P&P describes the manner in which the source for the budgeted purchase is to be selected. Once the source for a properly appropriated purchase has been selected, P&P Chapter 2 describes the manner in which the source for the budgeted purchase is to be approved.

PART 1 GENERAL PROVISIONS

5-102 PURPOSES

This Chapter of the P&P is intended to:

- 1) provide for transparency in the District procurement process;
- 2) provide for the fair and equitable treatment of those who deal with the District regarding procurement;
- 3) provide increased economy in District procurement;

- 4) foster effective broad-based competition within the free enterprise system to the extent practicable; and
- 5) Consistent with the District's vision to provide reliable, clean drinking water by responsibly managing our resources and proactively planning for the future, this Chapter is intended to provide proper value to the District with cost effective goods and services.

5-103 DEFINITIONS

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

- 1) "Procurement Board" means the Utah State Procurement Policy Board.
- 2) "Procurement Official" means the GM or his/her designee.
- 3) "Protest Officer" means a standing committee or ad hoc committee of the Board as determined by the Chair.

5-106 DISTRICT AUTHORITY AS AN INDEPENDENT PROCUREMENT UNIT

- 1) The District may:
 - a) engage in a standard procurement process;
 - b) acquire a procurement item under an exception to the requirement to use a standard procurement process, as provided in this Chapter, the Procurement Code or the Procurement Board regulations; or
 - c) otherwise engage in an act authorized or required by this Chapter, the Procurement Code or the Procurement Board regulations.
- 2) With respect to a procurement or contract over which the Procurement Official has authority, the Procurement Official may:
 - a) manage and supervise the procurement to ensure to the extent practicable that the District receives the best value;
 - b) prepare and issue standard specifications for procurement items;
 - c) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;

- d) delegate duties and authority to District staff, as considered appropriate;
 - e) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with the Procurement Code, the Procurement Board regulations or this Chapter;
 - f) attempt to resolve a contract dispute in coordination with the District’s General Counsel; and
 - g) at any time during the term of a contract awarded by the District, correct or amend a contract to bring it into compliance or cancel the contract:
 - i) if the Procurement Official determines that correcting, amending, or canceling the contract is in the best interest of the District; and
 - ii) after consulting with the District’s General Counsel.
 - iii) any such action that is material should be reported to the Board.
- 3) The authority described in the above section shall not be exercised if it would be in conflict with any other provision in this P&P, or would be inconsistent with instructions of the Board.

5-107.5 APPLICATION

- 1) Except as otherwise directed by the Board, this Chapter, the Procurement Code, and any applicable Procurement Board regulations shall govern the District’s purchase of all goods and services.
- 2) This Chapter describes the procedure for District procurements. All District procurements shall be properly appropriated as described in P&P Chapter 2. Once an appropriate source has been selected pursuant to this Chapter, contracts and expenditures must be authorized consistent with P&P Section 2-642. Any District monies shall be disbursed consistent with P&P Section 2-635.
- 3) This Chapter shall, to the extent reasonable, be interpreted in a manner consistent with those portions of the Procurement Code and any Procurement Board regulations which apply to the District.
- 4) Nothing in this Chapter of the P&P shall create rights, interests, or causes of action against the District, its Trustees, officers, agents or employees. Failure to follow procedures as described in this Chapter shall not invalidate the action taken, unless otherwise expressly provided by law.

5-107.6 EXEMPTIONS

To the extent purchases are exempted from the Procurement Code or the Procurement Board regulations, they are also exempted from the terms of this Chapter.

PART 3 PROCUREMENT OFFICIAL

5-303 DUTIES AND AUTHORITY OF PROCUREMENT OFFICIAL

- 1) The Procurement Official will:
 - a) supervise the District's procurement to assure that all District procurements are properly appropriated by the Board pursuant to P&P Chapter 2 and the instructions of the Board;
 - b) supervise the District's procurement to assure that it is consistent with this Chapter, applicable statutes, any applicable Procurement Board regulations and any instructions of the Board;
 - c) exercise general supervision and control over inventories belonging to the District;
 - d) establish reasonable procedures for the inspection and acceptance of goods and services;
 - e) prepare and maintain specifications for goods and services as described in this Chapter;
and
 - f) recommend periodic updates to this Chapter.
- 2) Except as otherwise described in this Chapter, or as otherwise directed by the Board, the Procurement Official has the power to act as described in the Procurement Code or Procurement Board regulations.

PART 5 OTHER STANDARD PROCUREMENT PROCESSES

5-506 SMALL PURCHASES

- 1) As used in this section:
 - a) "Annual cumulative threshold" means the maximum total annual amount that the District may expend to obtain procurement items from the same source under this section. The District's annual cumulative threshold is \$75,000.

- b) "Individual procurement threshold" means the maximum amount that the District may expend to obtain a procurement item under this section. The District's individual procurement threshold is \$75,000.
 - c) "Single procurement aggregate threshold" means the maximum total amount that the District may expend to obtain multiple procurement items from one source at one time under this section. The District's single procurement aggregate threshold is \$75,000.
- 2) The District's rules governing small purchases include but are not limited to:
- a) Before making a purchase of \$2,000 or less, the District manager responsible for the purchase shall use means which are reasonable under the circumstances to assure that the District is getting good value and a reasonable price. A purchase of goods or services for more than \$2,000, but not exceeding \$75,000, may be awarded without a competitive process after the solicitation of price quotations from enough prospective vendors to reasonably ensure that the District received a competitive price. Such solicitations may be made electronically, orally, or in writing.
 - b) Department managers are authorized to make purchases of goods and services of \$25,000 or less which have been properly appropriated consistent with Chapter 2 of the P&P. Purchases greater than \$25,000 shall be authorized and approved by the Procurement Official.
- 3) The Procurement Official will prepare a report on small purchases exceeding \$50,000 and not exceeding \$75,000 to the Board.
- 4) Expenditures made under this section may not exceed the thresholds established in State Procurement Board Rules unless the Procurement Official gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

PART 7 REQUESTS FOR PROPOSALS

5-702 CONTRACTS AWARDED BY REQUEST FOR PROPOSALS

- 1) Except as otherwise instructed by the Board, a request for proposals process, as provided in Part 7 of the Procurement Code and the Procurement Board regulations, may be used instead of bidding when it is determined that it is appropriate and will provide the best value or is the most advantageous to the District. This determination will be made by the Procurement Official.
- 2) Except as otherwise instructed by the Board, requests for proposals are allowed for procurement of goods and services related to Process Control/Supervisory Control and Data

Acquisition (“PC/S”) system instrumentation.

PART 8
EXCEPTIONS TO PROCUREMENT REQUIREMENTS

5-802 AWARD OF CONTRACT WITHOUT ENGAGING IN STANDARD PROCUREMENT PROCESS—NOTICE—DUTY TO NEGOTIATE CONTRACT TERMS IN BEST INTEREST OF PROCUREMENT UNIT

- 1) The Procurement Official may award a contract for a procurement item without engaging in a standard procurement process, as provided in Section 802 of the Procurement Code and Procurement Board regulations. Except as otherwise expressed in the P&P the determination required by Section 802 of the Procurement Code will be made by the Board.
- 2) The Procurement Official shall give public notice of a procurement under this section as described in Section 112 of the Procurement Code, if the cost of the procurement exceeds \$50,000, except where publication is not required as provided in Section 802 of the Procurement Code.

5-802.7 EXTENSION OF A CONTRACT WITHOUT ENGAGING IN A STANDARD PROCUREMENT PROCESS

- 1) The Procurement Official may extend a contract without engaging in a standard procurement process as provided in Section 802.7 of the Procurement Code and Procurement Board regulations. The Board shall be promptly notified of such a contract extension.

5-803 EMERGENCY PROCUREMENT

- 1) The Procurement Official may authorize an emergency procurement without using a standard procurement process as provided in Section 803 of the Procurement Code and Procurement Board regulations. The Board shall be promptly notified of the emergency procurement.

PART 9
CANCELLATIONS, REJECTIONS AND DEBARMENT

5-902 CANCELLATION AND REJECTION OF BIDS AND PROPOSALS

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

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

5-904 DEBARMENT OR SUSPENSION FROM CONSIDERATION FOR AWARD OF CONTRACTS—CAUSES FOR DEBARMENT—APPEAL

- 1) The Procurement Official or the Board may debar or suspend a person from consideration for award of District contract as provided by Section 904 of the Procurement Code. Any debarment or suspension by the Procurement Official shall be promptly reported to the Board.

PART 11 BONDS

5-1103 BONDS OR SECURITY NECESSARY WHEN CONTRACT AWARDED—WAIVER—ACTION—ATTORNEY FEES

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

5-1105 FORM OF BONDS—EFFECT OF CERTIFIED COPY

- 1) Bid bonds, payment bonds and performance bonds must be surety bonds in the standard District form properly issued by a surety licensed and authorized to issue such bonds in Utah. The Procurement Official may approve another form in writing before the bond is due and/or specify a specific form of bonds as part of the solicitation. Any person may obtain from the District a certified copy of a bond upon payment of the cost of reproduction and postage, if any. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

PART 12 CONTRACTS AND CHANGE ORDERS

5-1202 CONTRACTS AND CHANGE ORDERS

- 1) The Procurement Official may adopt, and amend from time to time, standard District construction contract clauses that comply with the Procurement Code.

5-1207 CERTIFICATION OF CHANGE ORDER

- 1) Any construction contract change which increases the contract amount shall be properly appropriated and expended consistent with P&P Chapter 2 and instructions of the Board.
- 2) When approving a procurement contract or change to a procurement contract, the Board may also approve an appropriate contract contingency or change to an existing contract contingency.
- 3) Contract changes that do not modify the contract scope and are within the board-approved contract contingency may be approved by the Procurement Official, if the value is more than \$25,000. Moreover, changes \$25,000 or less, may be approved by the Department Manager.
- 4) Contract changes that modify the contract scope and /or the available Board-approved contract contingency may be approved as follows:
 - a) Contract changes \$25,000 or less, by a Department manager.
 - b) Contract changes \$75,000 or less, by the Procurement Official.
 - c) Contract change exceeding \$75,000, by the Board
- 5) Change directives are formalized in a change order that is reported to the Board at the next available scheduled meeting. The change directives bundled in these change orders may collectively exceed the individual approval limits described above.
- 6) Because of the unknown time and cost, the District does not normally approve time and materials contract changes.
- 7) When an emergency condition as defined in P&P Section 5-803 occurs, the Procurement Official is authorized to approve a time and materials contract change and/or exceed a \$75,000 change directive when it is determined to be in the District's best interest after consulting with the Board chair. The change will be brought to the Board for ratification at the next scheduled Board meeting.

PART 13 GENERAL CONSTRUCTION PROVISIONS

5-1302 ALTERNATIVE METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT

- 1) Subject to Procurement Code and District Procurement Regulations, the Procurement Official may select an appropriate method of construction contracting management for a particular project, after considering the factors stated in Utah Code Ann. § 63G-6a-1302(3)(a)–(h). A written statement signed by the Procurement Official describing the facts that led to the selection of a particular method of construction contracting management shall be included with the contract file.

PART 15 DESIGN PROFESSIONAL SERVICES

- 1) Except as otherwise instructed by the Board, design professional services may be procured in any manner that is consistent with Part 15 of the Procurement Code and the Procurement Board regulations.

PART 16 PROTESTS

5-1601 PROTESTS

- 1) Protests will be considered in compliance with Part 16 of the Procurement Code and Procurement Board regulations. A request for intervention into a protest must be filed promptly. Intervention in a protest will be allowed at the discretion of the Protest Officer.

PART 24 UNLAWFUL CONDUCT AND PENALTIES

5-2401 UNLAWFUL CONDUCT AND PENALTIES

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