

# **General Policy and Rules and Regulations of TCWD**

## **CHAPTER 9: CONTRACTING BY THE DISTRICT**

### **Section 9.1      Contracting by the District.**

California Code does not currently require competitive bidding by county water districts. Accordingly, the Board may seek a sole source bid for a designed project. This rule (policy) does not preclude the Board from seeking multiple bids. All contracts for which the District decides to execute through a competitive bidding process shall be made in accordance with this Article.

### **Section 9.2      Competitive Bidding.**

9.2.1 Competitive Bids. Except as directed by the Board, all contracts for capital expenditures, estimated to cost \$50,000.00 or more in January of 2005 dollars, which amount shall be adjusted annually by the Consumer Price Index, may be made through the competitive bidding process established herein, except:

- a. Contracts for articles which are patented, copyrighted or otherwise unique and not on sale by dealers generally but only at a fixed and uniform price by the owner or his agents or assigns.
- b. Contracts wherein competitive bidding would not produce an advantage or where it is impracticable to obtain what is required subject to the competitive bidding provisions because of the unique, exploratory, or experimental nature of the work.
- c. Contracts where, within six (6) months previous to the date of execution, advertising for identical articles or articles of the same general character has filled the secure responsive proposals and, in the opinion of the General Manager, further advertising will not alter this result.
- d. Contracts with any governmental agency.

- e. Contracts for maintenance work as defined in Section 9.2.6.
- f. Contracts directed by the Board to be selectively bid (as further detailed in Section 9.2.2.1) or negotiated.
- g. Contracts made under an emergency situation as defined in Section 9.3.
- h. The General Manager shall prescribe the procedure for contracting any and all exceptions noted in subsections

(a) through (g), above.

- 9.2.2 Notice Procedure. A notice inviting bids is a notice inviting proposals for entering into a contract upon the terms of contract documents incorporated in the notice by reference. The notice shall expressly provide for and/or reserve the District's right to reject any and all proposals.

No notice inviting bids for any contract required to be let upon competitive bidding shall be posted or advertised unless there is first prepared a complete set of contract documents detailing the terms of the agreement and the work to be performed, which shall be available to any interested party.

Notice inviting bids shall state the time and place for receiving and opening of the bids. The notice shall be published at least ten (10) calendar days before the date of opening the bids in a newspaper of general circulation within the District.

- 9.2.2.1 Select Bid List and Process. In lieu of publishing a notice inviting bids based on a competitive bidding process, the Board may direct that a contract(s) be selectively bid to qualified contractors. As part of the selective bidding process, notice inviting bids may be mailed to all qualified contractors, identified according to categories of work. Lists of qualified contractors shall be created and maintained by the General Manager.

- 9.2.3 Evaluation. Unless otherwise directed by the Board, the

General Manager, or General Manager's designee, shall compare all bids received, pursuant to any Notice inviting bids or other solicitation, for compliance with the terms set forth therein and shall determine the lowest responsible bid of all those received. The General Manager shall make his recommendation as to such award to the Board.

All contract proposals with stipulated rates for labor and equipment shall state predetermined overhead and profit.

- 9.2.4 Contract Proposals. All contract proposals shall have stipulated rates for labor and equipment and predetermined overhead and profit margin.
- 9.2.5 Contract Documents. The contract documents shall consist of such documents as the General Manager may deem desirable in addition to those required by law. Whenever award of contract is made by the Board, such award shall constitute approval of the contract documents and shall be the authority to carry out the powers described in the contract documents.
- 9.2.6 Execution. After award, all contracts required to be let upon competitive bidding shall be executed on behalf of the District by the General Manager unless otherwise directed by the Board.
- 9.2.7 Maintenance. For purposes of this Chapter, the term "maintenance work" includes all of the following:
1. Routine, reoccurring, and usual work for the preservation or protection of any facility owned or operated by the District for its intended purposes;
  2. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
  3. Work performed to keep, operate, and maintain District owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of twenty-three thousand (23,000) volts and higher.

### **Section 9.3      Emergencies.**

In cases of great emergency, as determined by the Board, including, but not limited to, states of emergency as defined in Section 8558 of the California Government Code, when repair or replacements are necessary to permit the continued conduct of the operation or services of the District or to avoid danger to life or property, the Board, by majority vote, may proceed at once to replace or repair any public facility without adopting plans, specifications, work sheets, working details or other contract documents, or giving notice for bids to let contracts. In the event the Board may not be immediately convened, authority is granted to the General Manager to declare an emergency. A declaration of emergency shall be ratified at the next meeting of the Board. The work may be done by day labor under direction of the Board, by contract, or by combination of the two. The Board, by majority vote, may delegate to the General Manager the power to declare a public emergency subject to confirmation by the Board, by a 4/5ths vote, at its next meeting.

#### **Section 9.4      Specifications and Drawings.**

Specifications, including drawings, if any, shall clearly describe the work to be done, the quality and properties of materials to be furnished, the results and performance required, and the method of payment for the work done and the materials and equipment furnished. Any person may examine the plans, specifications, or working details, or all of these, adopted by the District for any project.

Specifications for work contracted by the District shall be in accordance with the most current edition of the District's Design Criteria and Standard Drawings for Water and Sewer Facilities and the Standard Specifications for Public Works Construction, popularly known as the "Green Book". In the event of a conflict between such publication and these Rules and Regulations, or the specific directives of the Board, the Rules and Regulations, and such Board directives, shall control.

#### **Section 9.5      Performance and Payment Bond Requirements.**

- 9.5.1      In accordance with Civil Code Section 3248, the contractor shall provide a payment bond for one hundred percent (100%) of the contract price.

- 9.5.2 The contractor shall also furnish a faithful performance/warranty bond in the sum of one hundred percent (100%) of the contract price with respect to the performance of the equipment.

## **Section 9.6      Security Deposits in Lieu of Retention.**

Pursuant to Public Contract Code Section 22300, a contractor can deposit securities to act as a substitute for the retention of contract earnings by the District. A contractor desiring to deposit such securities in lieu of retention shall notify the District at the earliest possible time, and in no event later than the signing of the contract documents, of its desire to enter into such an agreement with the District. Any contractor entering into such a contract with the District shall comply with the provisions of Public Contract Code Section 22300.

## **Section 9.7      Change Order Policy.**

Unforeseen circumstances and changes in the scope of work on contracts may make change orders necessary. It is the desire of the Board that the District's Change Order Policy be adopted and implemented to more effectively allow cooperation between the Board, General Manager, District authorized Engineer, Staff and contractors to the District with regard to such change orders. For purposes of this section the definition of "extra work" or "work subject" to the requirement of a written change order is: if the subject contract does not include such definition or a reference to such definition, the definition of such extra work or work subject to the requirement of a written change order shall be as set forth in the standard general provisions of contracts in use by the District at the time the subject contract was entered into.

- 9.7.1 Change Order Procedures. Because monetary amounts vary according to the size and complexity of the District's various construction projects, there shall be two levels of change orders:

- a. In Level 1, a contract change order, or change orders, shall be allowed up to a maximum of \$25,000 or 30% of the total contract price, whichever is lower, contract change orders in Level 1 shall require prior approval of the District authorized Engineer and General Manager

prior to execution and the total cost of the change order, in the aggregate, shall not exceed the limits stated in this sub-paragraph. The Board shall be informed of the approved change order at the next meeting.

- b. Any contract change order, or change orders, in excess of \$25,000 or 30% of the total contract price, whichever is lower, will fall under the category of Level 2. Level 2 change orders shall require the prior approval of the Board. In the event of multiple change orders, the change order that causes the contract to exceed the stated Level 2 limits shall be presented to the Board for approval. All preceding change orders for the contract should accompany the agendaized change by way of background and information.

- 9.7.2 Change Orders Under Situations of Urgent Necessity. It is recognized by the Board that upon occasion, an urgent condition may require that an immediate decision to authorize additional work, or a change order at Level 2, may exist.

An urgent condition, for purposes of this section only, is defined as a condition having an immediate or impending negative impact on District property and/or funds, the public health, public safety, public welfare, or that there is a present, immediate, and existing emergency which could not have reasonably been foreseen.

In the case of urgent necessity, where a special meeting of the Board cannot be reasonably called within the time limits required to deal with the necessity, the General Manager may authorize Level 2 change orders. In the event this occurs, the General Manager shall notify all Directors at the earliest possible time and review and ratification of the General Manager's actions shall be agendaized at the next earliest Board meeting.

- 9.7.3 Change Orders Effective. Change orders shall become effective when approved by the District, as appropriate for the change order level, discussed in Sections above, and executed by the authorized representatives of the District and the authorized representative(s) of the contractor.

**Section 9.8      Stop Notice Policy.**

From time to time, the District may receive stop notices, pursuant to Civil Code Section 3179, and any successor section thereto, as they relate to District construction projects. It shall be the policy of the District, upon receiving such a stop notice to withhold funds, pursuant to Civil Code Section 3186, and any successor section thereto, from the contract retention funds equal to one hundred percent (100%) of the stated amount of the stop notice, plus an additional ten percent (10%) of the stated amount of the stop notice as representing one year's interest on the stated amount at the legal rate of interest. In the event that the contract retention funds are not equal to the amount stated above, the District shall withhold all of the contract retention funds then held by the District. This policy is subject to the discretion of the General Manager to withhold a different amount from the contract retention funds if the General Manager determines that such a different amount is appropriate and prudent.

**Section 9.9      Compliance with Applicable Laws and Regulations.**

It shall be the policy of the District to comply with applicable laws and regulations within the Public Contract Code, Labor Code, Government Code and Civil Code as such laws and regulations relate to District construction projects. The contractor shall also comply with such applicable laws and regulations.