

**2.01 Board Organization and Procedures**

**2.01.010 Compensation of Directors**

The compensation for Directors of the Napa Sanitation District is hereby established at \$218 for each regular, special, standing or ad hoc committee meeting of the Board attended by the member or for each day's service rendered as a member of the Board by request of the Board, up to the maximum established by State Law.

**2.02 Claims Procedure**

The purpose of this Section is to establish claims procedures for all claims for money or damages against the district which are excepted by Section 905 of the Government Code of the state of California from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code of the state of California and which are not governed by any other statutes or regulations expressly relating thereto.

**2.02.010 Authority and Scope**

District Code Section 2.02 is enacted pursuant to the authority of Section 935 of the Government Code of the state of California and is intended to cover all claims against the district for money or damages for which said section permits the district to prescribe procedures.

**2.02.020 Date of Accrual of Cause of Action**

For the purpose of computing the time limits prescribed by 2.02.030 and 2.02.040, the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirements that a claim be presented to and be acted upon by the district before an action could be commenced thereon. However, the date upon which a cause of action for equitable indemnity or partial equitable indemnity accrues shall be the date upon which a defendant is served with the compliant giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the district.

**2.02.030 Necessity of Existence of Liability**

Nothing in this part imposes liability upon the district unless such liability otherwise exists.

**2.02.040 Necessity of Written Claim**

Except as provided in Sections 946.4 and 946.6 of the Government Code of the state of California, no suit for money or damages may be brought against the district upon any cause of action exempted by Section 905 of the Government Code of the state of California from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code of the state of California, and which is not governed by any other statutes or regulations relating expressly thereto, until a written claim

therefor has been presented to the district in accordance with the provisions of Section 2.02 and has been acted upon by the board of directors or has been deemed to have been rejected by the board of directors in accordance with Section 2.02.140.

**2.02.050 Contents of Claim**

A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- 1) The name and post office address of the claimant;
- 2) The post office address to which the person presenting the claim desires notices to be sent;
- 3) The date, place and other circumstances of the occurrence or transaction that gave rise to the claim asserted;
- 4) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
- 5) The name or names of the district agent(s) or employee(s) causing the injury, damage, or loss, if known; and
- 6) The amount claimed if it totals less than ten thousand dollars as of the date of presentation of the claim, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars, no dollar amount shall be included in the claim. However, it shall indicate whether jurisdiction over the claim would rest in municipal or superior court.

**2.02.060 Signature and Date**

The claim shall be signed and dated by the claimant or by some person on his behalf.

**2.02.070 Notice of Insufficiency of Claim**

- A) If in the opinion of the board of directors or the person designated by it a claim as presented fails to comply substantially with the requirements of 2.02.050 or 2.02.060, the board of directors or such person may, at any time within twenty days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein.
- B) Such notice, if given, shall be given in the manner prescribed in Section 2.02.200.
- C) The board of directors may not take action on the claim for a period of fifteen days after such notice is given.

**2.02.080 Time for Presentation of Claims**

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Sections 2.02.180 and 2.02.190 no later than six months after the accrual of the cause of action. A claim relating to any other cause of action

shall be presented as provided in Sections 2.02.180 and 2.02.190 not later than one year after accrual of the cause of action.

#### **2.02.090 Notice That Claim Not Timely Filed**

When a claim that is required by Section 2.02.080 to be presented not later than six months or one year after accrual of the cause of action is presented after such time without the application provided for in Section 2.02.100, the board or its designee, may at any time within forty-five days after the claim is presented, give written notice to the person who presented the claim that the claim was not filed timely and that it is being returned without further action. The notice shall be in substantially the following form:

The claim you presented to the Napa Sanitation District is being returned because it was not presented within the time required by law. See Sections 2.02.080 and 2.02.090 of this Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

The only possible recourse you may have is to apply without delay to the Napa Sanitation District for leave to present a late claim. See Sections 2.02.100 to 2.02.130 of this Code, inclusive, and Government Code Section 946.6. No determination has been made as to whether you have grounds for such an application or whether such application could not be made within relevant time limits. However, the Napa Sanitation District has the authority to, and will under some circumstances, grant leave to present a late claim to any applicant who timely presents such application. See Section 2.02.110 of this Code.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

#### **2.02.100 Late Claim Application**

- A) When a claim that is required by Section 2.02.080 to be presented not later than six months after accrual of the cause of action is not presented within such time, a written late claim application may be made to the district for leave to present such claim.
- B) The late claim application shall be presented to the district as provided in Sections 2.02.180 and 2.02.190 within a reasonable time not to exceed one year after accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the late claim application. In computing the one-year period under this section, time during which the person who sustained the alleged injury, damage or loss is a minor shall be counted, but the time during which he is mentally incapacitated and does not have a guardian or a conservator of his person shall not be counted.

#### **2.02.110 Grant or Denial of Late Claim Application**

- A) The board of directors shall grant or deny the late claim application within forty-five days after it is presented to the district. If the board of directors does not act upon the application within forty-five days after the application is presented, the application shall be deemed to have been denied on the forty-fifth day.

- B) The board of directors shall grant the application where one or more of the following is applicable:
- 1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the district was not prejudiced by the failure to present the claim within the time specified in its defense of the claim in 2.02.080; or
  - 2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Article 8 for the presentation of the claim; or
  - 3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 2.02.080 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or
  - 4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 2.02.080 for the presentation of the claim.

**2.02.120 Notice of Board of Directors' Action on Late Claim**

Written notice of the board of directors' action upon the late claim application shall be given in the manner prescribed in Section 2.02.200. If the application is denied, the notice shall include a wording in substantially the following form:

**WARNING**

**If you want to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of District Code Section 2.02.040 (claims presentation requirement). See Government Code Section §946.6. Such petition must be filed with the court within 6 months from the date your application for leave to present a late claim was rejected. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney you should do so immediately.**

**2.02.130 Claim Deemed Presented to Board of Directors upon Day Leave to Present Late Claim Granted**

If a late claim application for leave to present a claim is granted by the board pursuant to Section 2.02.110 the claim shall be deemed to have been presented to the board of directors upon the day that leave to present the claim is granted.

**2.02.140 Time for Action by Board of Directors on Claim**

- A) The board of directors shall act on a claim in the manner provided in Section 2.02.150 within forty-five days after the claim has been presented.
- B) The claimant and the board of directors may extend the period within which the board of directors is required to act on the claim by written agreement made:
- 1) Before the expiration of such period; or

- 2) After the expiration of such period if an action based on the claim has not been commenced and is not yet barred by the period of limitations provided in Section 945.6 of the Government Code of the state of California.
- C) If the board of directors fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board of directors on the last day of the period within which the board of directors was required to act upon the claim. If the period within which the board of directors is required to act is extended by agreement pursuant to this section, whether made before or after the expiration of such period, the last day of the period within which the board of directors is required to act shall be the last day of the period in such agreement.

**2.02.150 Action by Board of Directors on Claim**

The board of directors may act on a claim in one of the following ways:

- 1) If the board of directors finds the claim is not a proper charge against the district, it shall reject the claim.
- 2) If the board of directors finds the claim is a proper charge against the public entity and is for an amount justly due, it shall allow the claim.
- 3) If the board finds the claim is a proper claim against the district, but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
- 4) If legal liability of the district or the amount justly due is disputed, the board of directors may reject the claim or may compromise the claim.
- 5) If the board allows the claim in whole or in part or compromises the claim, it may require claimant, if he accepts the amount allowed or offered to settle the claim, to accept it in settlement of the entire claim.

**2.02.160 Notice of Rejection**

- A) Written notice of the action taken under Section 2.02.160 or the inaction, which is deemed rejection under Section 2.02.140 shall be given in the manner, prescribed by Section 2.02.200. Such notice may be in substantially the following form:

“Notice is hereby given that the claim which you presented to the Napa Sanitation District on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$ \_\_\_\_\_ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) by (Name of Entity) on (indicate date of action or rejection by operation of law).”

- B) If the claim is rejected in whole or in part, the notice required by subsection (A) shall include a warning in substantially the following form:

**“WARNING**

**Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”**

**2.02.170 Reexamination of Rejected Claim**

The board of directors may in its discretion, within the time prescribed by Section 945.6 of the Government Code of the state of California for commencing an action on the claim, reexamine a previously rejected claim in order to consider a settlement of the claim.

**2.02.180 Presentation of Claim or Late Claim Application to District**

- A) A claim or a late claim application to the district shall be presented to the district by:
  - 1) Delivering it to the secretary or auditor thereof; or
  - 2) Mailing it to such secretary or auditor or to the board of directors at the principal office of the district located at P.O. Box 2480, Napa California 94558.
- B) A claim or late claim application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the secretary, auditor or board of directors of the district within the time prescribed for presentation thereof.
- C) A claim or late claim application shall be deemed to have been presented in compliance with this section if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to the district which is on file at the time the claim or late claim application is delivered or mailed. As used in this section, “statement in the Roster of Public Agencies” means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which such statement or amended statement is on file.

**2.02.190 Mailing**

If a claim or late claim application to the district is presented or sent by mail under this chapter, or if any notice under this chapter is given by mail, the claim, or late claim application or notice shall be mailed in the manner prescribed in this section. The claim, or late claim application, or notice must be deposited in the United States post office, or a mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the government of the United States, in a sealed envelope, properly addressed, with postage paid. The claim, late claim application or notice shall be deemed to have been presented and received at the time of the deposit. Proof of mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedures of the state of California.

### 2.02.200 Manner of Giving Notice

- A) The notices provided for in Sections 2.02.070, 2.02.120 and 2.02.160 shall be given by either of the following methods:
  - 1) Personally delivering the notice to the person presenting the claim or making the late claim application;
  - 2) Mailing the notice to the address, if any, stated in the claim or late claim application as the address to which the person presenting the claim or making the late claim application desires to be sent, or if no such address is stated in the claim or late claim application, by mailing to the address, if any, of the claimant as stated in the claim or late claim application.
- B) No notice need be given where the claim or late claim application fails to state either an address to which to person presenting the claim or making the late claim application desires to be sent or an address of the claimant.

## 2.03 Procurement Policies

### 2.03.010 Purchasing Agent

- A. **Designation of Purchasing Agent.** The Director of Administrative Services shall be the Purchasing Agent for the Napa Sanitation District (“District”) and shall have the duties and powers described by the applicable laws of the state relating to purchasing agents, this ordinance, and applicable resolutions of the Board of Directors. When it is not feasible or practical for the Director of Administrative Services to serve as the Purchasing Agent, the General Manager shall serve as the Purchasing Agent.
- B. **Authority to Commit Funds.** Only the Board of Directors, the General Manager, the Assistant General Manager, the Purchasing Agent, or their designee may commit District funds for the purchase of any goods, equipment or services for District benefit. Said commitments of District funds may be made only where the person making the commitment is authorized to do so by a specific provision of this Ordinance. Except in cases of emergency as hereinafter provided, or in cases where the Board of Directors has made specific provision, no purchase of property by any governing body or person other than the Board of Directors, the General Manager, the Assistant General Manager, the Purchasing Agent, or their designee shall be binding on the District or constitute a lawful charge against District funds.
- C. **Delegation of Authority.** The Purchasing Agent may delegate the authority for the purchase of goods and supplies and for the procurement of professional services to District Department Heads as described herein.
- D. **Duties of Purchasing Agent.** The Purchasing Agent or his/her designee shall:
  - (1) Monitor and coordinate District purchases for all materials, supplies, services, furnishings, equipment and other property in accordance with rules and regulations

prescribed by District ordinances, resolutions, policies, and procedures, and as otherwise provided for by law.

- (2) Maintain the list of qualified contractors required pursuant to Section 2.C of this Ordinance.
- (3) Engage independent contractors to perform services for the District in accordance with the provisions of this Ordinance.
- (4) Engage independent contractors to construct, repair or furnish any building or structure consistent with the authority vested in the Purchasing Agent by this Ordinance.
- (5) When authorized, sell or dispose of surplus property of the District.
- (6) Perform such other services as the Board of Directors may from time to time by resolution require.

E. **Rules and Procedures.** The Purchasing Agent is charged with the authority and responsibility for coordinating and managing the procurement of goods, supplies, equipment, and services according to applicable law and this ordinance. This authority includes the responsibility to establish rules and procedures to ensure that applicable laws, regulations and procurement policies are followed.

#### **2.03.020 Informal Bidding for Construction**

- A. **Dollar amount limitations.** Public projects, as defined by the Uniform Public Construction Cost Accounting Act (Section 22000, et seq. of the Public Contract Code), of forty-five thousand dollars (\$45,000) or less may be performed by District employees by force account, by negotiated contract, or by purchase order without obtaining competitive bids. Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this Section. If all bids received are in excess of \$175,000, the Board of Directors may, by adoption of a resolution by four-fifths vote, award the contract, at one hundred eighty-seven thousand five hundred dollars (\$187,500) or less, to the lowest responsible bidder, if it determines the cost estimate of the District was reasonable.
- B. **Informal bidding procedures.** Public projects, as defined by the Uniform Public Construction Cost Accounting Act (Section 22000, et seq. of the Public Contract Code) and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.
- C. **Contractors list.** A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.
- D. **Notice inviting informal bids.** Where a public project is to be performed that is subject to the provisions of this Section, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 2(C) above, and/or to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section



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

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

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

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

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

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

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

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

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

#### **2.03.040 Purchase of Goods and Materials**

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

#### **2.03.050 Procurement of Professional Services**

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

- B. Professional Services for Select Professions.** Per California Government Code, Section 4526, the selection of a vendor to provide architectural, landscape architectural, engineering, environmental, land surveying, or construction project management professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. For these selected professions, there are special procedures for acquiring these services.
- C. Criteria for Use of Professional Service Contracts.** Contracted professional services shall be used only under the following conditions:
- (1) Urgent need which cannot be met by District employees.
  - (2) Temporary, intermittent, or irregular services which cannot be performed effectively by District employees.
  - (3) Special or highly technical skills which cannot be obtained from District employees.
  - (4) Need for an independent opinion, appraisal, audit, or similar services.
  - (5) Lack of sufficient personnel to accomplish the work in the required time frame.
- D. Selection of Vendors for Professional Services-Generally.** Vendors for professional services other than those identified in California Government Code, Section 4525, shall be selected as follows:
- (1) Vendor selection shall be based on a competitive process whenever reasonably feasible. Professional services may be competitively solicited through informal Requests for Quotes (RFQ) and informal Requests for Proposals (RFP) or through formal sealed competitive proposals. The type of service to be contracted for, the anticipated award amount, and the potential risks involved affect the decision whether to use informal or formal purchasing procedures.
  - (2) Professional service contracts may be awarded without competitive solicitation when there is only one person or vendor available or capable of providing the required service, when there are limitations in the availability of potential contractors, when the services required are of such a specialized nature that precludes competitive solicitation, or when other conditions exist such that the appropriate awarding authority determines that it is in the District's best interest to waive competitive solicitation for the required professional services.
- E. Selection of Vendors for Select Professional Services.** Vendor selection for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, as defined in California Government Code, Section 4525, shall follow the procedure outlined below:
- (1) Prospective vendors are requested to submit statements of qualifications to the District for the required services or proposed project. Statements of qualifications may be solicited through trade publications and by other methods of advertisement.
  - (2) District staff shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms, when available, regarding anticipated concepts and the relative

utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by the District, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(3) The department shall negotiate a contract with the most highly qualified individual or firm as established by the evaluation procedure in (2) above, for service at a price the District determines is fair and reasonable. Should the District be unable to successfully negotiate a contract with the most highly qualified individual or firm at a price the department deems fair and reasonable, then negotiations with that individual or firm shall be terminated; and, the District shall negotiate a contract with the second most highly qualified individual or firm. Failing accord with the second most qualified individual or firm, the District shall terminate the negotiations, and then undertake negotiations with the third most qualified firm. Should the District be unable to negotiate a satisfactory contract with any of the selected firms, the District shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

- F. **Award of Contract.** The Board of Directors shall authorize all task orders for professional services over seventy-five thousand dollars (\$75,000). The Purchasing Agent shall have the authority to authorize all other professional services task orders.
- G. **Change Orders.** The General Manager may, without authorization of the Board of Directors, approve change orders or amendments in connection with task orders for professional services under this Section, up to twenty percent (20%) of the original task order amount for task orders up to one hundred seventy-five thousand dollars (\$175,000), and up to ten percent (10%) for task orders at or above one hundred seventy-five thousand dollars (\$175,000), with a maximum cumulative change order amount of one hundred fifty thousand dollars (\$150,000).

#### **2.03.060 Sole Source Procurement**

- A. **Competition is presumed.** All reasonable attempts should be made to identify multiple vendors or multiple brands prior to any approval of sole source procurement.
- B. **Sole source procurement defined.** Sole source procurement is any acquisition which, by virtue of the specifications required or by the clear and specific restrictions imposed by a provider, restricts the procurement to one vendor or to one brand.
- C. **Allowable justifications for sole source procurement.** Sole source procurements are allowed under the following conditions or when procuring the following goods or services:
- Goods or materials where cost is under three thousand dollars (\$3,000)
  - Professional services performed by vendors on jobs less than seventy-five thousand dollars (\$75,000)
  - Maintenance work performed by contractors on jobs less than forty-five thousand dollars (\$45,000), as long as the price from contractor is within 10% of independent engineer's estimate of probable construction cost

- Property or services, the price of which is fixed by law
- Training seminars or other classes for personnel
- Materials, supplies or equipment or services that can only be obtained from one supplier, generally because of its technological, specialized or unique character
- The product is unique in design and/or has features which are required for a specific application
- The product must be compatible with existing equipment
- The product or service is available only from the manufacturer's authorized representative
- Automotive and heavy equipment repairs
- When, in the judgment of the Purchasing Agent, it is in the best interest of the District to negotiate, without engaging in a competitive bidding process, an extension of an existing contract for goods based upon satisfactory performance, as long as such negotiated price is fair and reasonable
- Purchases made from other public agencies by use of joint powers agreements, cooperative purchasing programs, pooling agreements, and other recognized types of agreements used by government agencies for the purpose of combining purchasing requirements in order to reduce costs, increase efficiency, or reduce administrative expenses
- Goods or services on, or provided by vendors on, the California Multiple Award Schedules (CMAS) list, subject to the limitations and provisions of the CMAS program, or other comparable cooperative purchasing program lists
- Materials, supplies or services that are acquired from a vendor based on a contractual arrangement with the vendor that was established pursuant to a California government competitive bid process.

### **2.03.070 Emergency Procurement**

- A. **Authority to award emergency contracts.** The Board of Directors, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate General Manager, administrative officer, District engineer, or other nonelected agency officer, the authority to order any emergency action to repair or replace a public facility or procure the necessary equipment, services and supplies for such purpose, without giving notice for bids to let contracts, when such actions are immediately necessary for the continued operation of the District or for the preservation of life or property.
- B. **Report to the Board.** If the person designated in Section 7(A) above orders any emergency action to repair or replace a public facility or procure the necessary equipment, services and supplies for such purpose, without giving notice for bids to let contracts, that person shall report to the Board of Directors within fourteen (14) days at its next regular meeting or, if necessary at a special meeting, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

- C. **Board approval of emergency action.** If an emergency is reported as described in this section, the Board shall initially review the emergency action at its next regularly scheduled meeting or at a special meeting if that regular meeting will occur later than fourteen (14) days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by four-fifths vote, that there is a need to continue the action, unless the person designated in Section 7(A) above has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to this subsection. When the Board of Directors reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

### **2.03.080 Protest and Appeal of Procurement Actions**

- A. **Protest.** Vendors may protest any procurement actions involving formal sealed bids and competitive sealed proposals. The following procedures shall apply:
- (1) Any directly affected party who is aggrieved in connection with the solicitation or award of a purchase order or contract issued through a formal sealed bid procedure may protest the procurement action taken.
  - (2) Such protests must be filed in writing with the District within five (5) working days from the time of the occurrence giving rise to the protest. Protests received after this time will not be considered.
  - (3) Any protest shall include the date and action taken resulting in a protest, and identify the material issue, including a detailed explanation of the basis for the protest, and the remedy sought. Specification related protests must be fully supported by technical data test results, or other pertinent information.
- B. **Resolution Process.**
- (1) **Informal Resolution.** Upon receipt of protest, the Purchasing Agent will convene, at the earliest possible convenience, discussions between the protesting party and appropriate District staff to seek informal resolution and/or to clarify the issues.
  - (2) **Response to Protest/Appeal.** If the protest is not resolved by mutual agreement, the Purchasing Agent shall provide a written response to the protesting party within fifteen (15) working days following the informal meeting. The response shall state the Purchasing Agent's decision, the facts supporting the decision, and shall inform the protesting party of its right to appeal the decision to the Board of Directors.
- C. **Appeal to the Board of Directors.** In the event the informal resolution procedure is unsuccessful, the protesting party may request an appeal hearing before the Board of Directors by filing a written request with the Board Secretary no later than five (5) working days after notification of the Purchasing Agent's decision. Any appeal hearing shall be scheduled within thirty (30) working days from the date request is received by Board Secretary. The Board Secretary shall notify the appellant of the scheduled hearing date by placing such notice in the U.S. Mail, 1st class, not less than ten (10) working days from the



date of hearing. The appellant shall have the right to testify at the hearing, to be represented by counsel, to present witnesses on his/her behalf, and to present oral and written documents and evidence on the issue. The hearing shall be conducted in an informal manner and the rules of evidence shall not apply. After the conclusion of the hearing, the Board of Directors shall make findings of fact and a decision concerning the issue(s).

- D. **Stay of Procurement Action During a Protest.** In the event of a timely protest under this Section, the District shall not proceed further with the solicitation or the award of the contract or purchase order until the protest is resolved, unless the Purchasing Agent, in consultation with the head of the using department and District Counsel, makes a written determination that the award of the purchase order or contract without further delay is necessary to protect a substantial interest of the District.

### **2.03.090 Debarment of Vendors**

- A. **Debarment of Vendors.** The Board of Directors shall have the authority to debar a person(s), company, or corporation for cause from consideration for award of contracts.
- B. **Causes for Debarment.** Causes for debarment include, but are not limited, to the following:
- (1) Conviction of or civil judgment for:
    - (a) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
    - (b) Violation of antitrust statutes relating to the submission of bids or proposals;
    - (c) Commission of embezzlement, theft, forgery, bribery, collusion, falsification or destruction of records, making false statements, or receiving stolen property; or
    - (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor or subcontractor.
  - (2) Violation of the terms of a public agency contract or subcontract so serious as to justify debarment, such as
    - (a) Willful or negligent failure to perform in accordance with the terms of one or more contracts; or
    - (b) A history of failure to perform, or of unsatisfactory performance of one or more contracts.
  - (3) For any other cause the Board determines to be so serious and compelling as to negatively affect responsibility as a District vendor, including debarment by another governmental entity.
  - (4) This Section shall not be construed to limit or prejudice any administrative or legal action available to the Board of Directors or the District.

### **2.03.100 Surplus Property**

- A. **Declaration of Surplus Property.** Only the Purchasing Agent has the authority to determine whether property owned by the District no longer has any useful value to the District. The Purchasing Agent has the authority to declare equipment and other property surplus if the

equipment has a current estimated market value of \$500 or less. If the current estimated market value exceeds \$500, or the property is recorded as a fixed asset, the Board of Directors has the sole authority to declare the property surplus.

- B. **Disposal of Surplus Property.** The Purchasing Agent is responsible for ensuring that the sale, lease, transfer, exchange, and disposal of surplus property is conducted in such a manner as to realize the maximum value possible from the sale or disposal of surplus property. The Purchasing Agent shall sell, lease, transfer, dispose of, or exchange surplus property in the manner authorized by the District Board of Directors, or as described below:
  - (1) The Purchasing Agent may contract with an auctioneer to conduct a District public auction, or with an auction service to arrange for the disposal of surplus property.
  - (2) For certain items valued at \$500 or less, the Purchasing Agent may conduct a publicly-advertised cash-only “garage sale” or may authorize disposal at a scrap or recycling facility in exchange for the scrap/recycling value.
  - (3) Surplus items that have no value, or when the labor, transportation and administrative cost to dispose of a surplus item exceeds the items value, the Purchasing Agent may discard the surplus item or otherwise dispose of the item, including giving the item to a school or charity within Napa County.
- C. **Prohibition Against Purchase by Employees.** The General Manager, Assistant General Manager, and Director of Administrative Services shall be prohibited from purchasing any District surplus property. Additionally, employees assigned the following duties within the District shall not, either directly or indirectly, bid or purchase surplus District property:
  - (1) Purchasing functions
  - (2) Responsible for surplus declarations
  - (3) Access to privileged information regarding the item or equipment or the value thereof, which is not available to all prospective bidders, or
  - (4) Assigned to the department having custody of the surplus property.
- D. **Trade-in Allowance**
  - (1) When purchasing property for which it is not required to advertise for bids, the Purchasing Agent is authorized to solicit and accept advantageous trade-in allowances for District property which has previously been declared surplus.
  - (2) Competitive bids for the purchase of property by the District may include a request for trade-in of equipment that has previously been declared surplus.
- E. **Proceeds from Disposition of Surplus Property.** Proceeds from the disposition of surplus property shall be deposited into the District’s Operating Fund for use by the District.

### **2.03.110 Other Rules & Regulations**

#### **A. Ethics Standards and Conflicts of Interest**

- (1) **Impartiality.** District employees shall discharge their duties impartially so as to assure fair access to governmental procurement by responsible vendors and service providers and to foster public confidence in the integrity of the District procurement process.

- (2) **No Conflicts of Interest.** No District employee shall participate in the selection process of a vendor or contractor when that employee has a familial or personal relationship with the person or business entity seeking a contract. Additionally, no contracts shall knowingly be issued to any current District employee or his/her immediate family, or to any former District employee or his/her immediate family, except a contract for training or support directly related to the former employee's job, until one year after separation; or as specified by the Fair Political Practices Commission and/or relevant California Government Code or Regulation. This includes individuals acting as agents or representatives. Upon discovery of an actual or potential conflict of interest, the employee shall promptly withdraw from further participation in the transaction involved and notify the Purchasing Agent or General Manager of the actual or potential conflict.
- (3) **No Gratuity.** District employees shall not solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement, specification, standard or contract.
- (4) **No Special Consideration.** District employees, officers, or officials by virtue of their positions shall not be entitled to any special consideration from vendors or merchants in their personal affairs nor shall they attempt in their official capacities to procure goods, supplies, equipment or services for the private use of any other person, including any employee, officer, or official of the District.
- (5) **Cause for Discipline or Debarment.** The acceptance of any gratuity or special consideration by any official or employee of the District from any vendor is a violation of District policy and may be cause for disciplinary action. The offer of any such gratuity or special consideration to any officer or employee of the District by any vendor may be cause for declaring such individual or firm to be an irresponsible vendor and debarring such vendor from bidding or otherwise doing business with the District, in accordance with the section of this ordinance regarding debarment of vendors.

**B. Whistleblower Protection.**

- (1) If an employee feels that the Purchasing Agent or General Manager's actions or activity fall outside state law or these procurement policies, such employee shall notify the General Manager, Chair of the Board and/or District Legal Counsel for subsequent review and resolution.
- (2) Employees shall not be disciplined for making any notifications under this Whistleblower provisions, provided that the employee does so in good faith.

**C. Unauthorized Purchases.** Unauthorized purchases are not considered an obligation of the District and the individual making such purchases shall be held personally liable for the cost of the purchase. Unauthorized purchases are defined to include any of the following:

- (1) Any procurement made not in conformance with these policies, including any actions to circumvent the delegation of procurement authority.

- (2) Any procurement where the good or service is intended for personal use and not intended for use by the District.

**D. Local Business Participation.** Local business participation in District contracts is encouraged.

- (1) The District staff shall make every reasonable effort to contract with and obtain price quotations from local businesses for labor, supplies and materials on all contracts that are not required by law or this Ordinance to be competitively awarded.
- (2) On all public contracts that are required by law to be competitively bid, the District staff shall make every reasonable effort to encourage the participation of local businesses.
- (3) All notices inviting bids shall include language to the effect that it is the District's policy to encourage bidders to utilize local businesses whenever possible on District projects.