

ORDINANCE NO. OC\_S~~AND-XX~~5652

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY SANITATION DISTRICT ESTABLISHING REQUIREMENTS AND PROCEDURES FOR THE PURCHASE OF GOODS, SERVICES, AND PUBLIC WORKS PROJECTS; AND REPEALING ORDINANCE NO. OCSD-5247

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# CONTENTS

ARTICLE 1. GENERAL PROVISIONS.....	6-5
Section 1.01. Purpose and Scope.....	6
.....	5
A. Purpose .....	65
B. Scope.....	65
Section 1.02. Title .....	65
Section 1.03. Definitions .....	65
Section 1.04. Rules and Guidelines.....	65
Section 1.05. Budgeted Funds.....	76
Section 1.06. The Purchasing Manager.....	76
A. Duties.....	76
B. Requests for Procurement.....	76
Section 1.07. Exceptions to Competitive Selection .....	76
A. Sole Source Procurement. ....	76
B. Emergency Procurement.....	87
Section 1.08. Evaluation Committees.....	
.....	
<del>97</del>	
Section 1.09. Severability.....	
.....	
<del>9</del>	
<del>7</del>	
ARTICLE 2. _____	
_____GOODS AND SERVICES .....	_____
_____	<del>97</del>
Section 2.01. Purpose and Scope.....	<del>97</del>
A. Purpose. ....	97
B. Scope. ....	98
Section 2.02. Selection Process.....	
.....	10
<del>8</del>	
A. Competitive Sealed Bids.....	
.....	10
<del>8</del>	
B. Equal Bids	

.....	<u>10</u>
8	
C. Multi-Step Sealed Bidding	<u>10</u>
.....	
8	
D. Request for Proposals	<u>11</u>
.....	
9	
Section 2.03. Exceptions	<u>11</u>
.....	
9	
A. Small Procurements	<u>11</u>
.....	
9	
B. Cooperative Purchases	<u>10</u>
.....	
<u>11</u>	
C. Critical Time-Sensitive Procurements	<u>12</u>
.....	
9	
<del>D. Renewals</del>	<del>12</del>
<u>D.</u>	<u>12</u>
E. Sole Source and Emergency Procurements	<u>12</u>
F. Master Contracts; Maintenance and Repair Services Less	
____ Than or Equal to \$300,000	<u>12</u>
ARTICLE 3. PROFESSIONAL SERVICES	<u>13</u>
Section 3.01. Purpose and Scope	<u>13</u>
A. Purpose	<u>13</u>
B. Scope	<u>13</u>
Section 3.02. Selection Process	<u>14</u>
A. Request for Proposals	<u>14</u>
B. Evaluation <del>and Ranking</del> of Proposals	<u>14</u>
C. Negotiation of Contract	<u>14</u>
Section 3.03. Exceptions	<u>15</u>
A. Sole Source and Emergency Procurements	<u>15</u>
B. Contractors Reporting to the Board	<u>15</u>
C. Procurements of \$10,000 or less	<u>15</u>

D.	Master Contracts; Professional Services Less Than or Equal to \$100,000	153
E.	Master Contracts: Professional Services Qualified Lists	153
ARTICLE 4.	PROFESSIONAL DESIGN SERVICES	175
Section 4.01.	Purpose and Scope	175
A.	Purpose	175
B.	Scope	175
Section 4.02.	Selection Process	175
A.	Competitive Selection	175
B.	Professional Design Services Greater Than \$300,000	175
C.	Master Contracts: Professional Design Services Less Than or Equal to \$300,000	197
Section 4.03.	Exceptions	219
A.	Sole Source and Emergency Procurements	2149
B.	<del>Continuation of Additional</del> Services	2149
C.	Procurements of \$10,000 or less	2149
ARTICLE 5.	PUBLIC WORKS PROJECTS	220
Section 5.01.	Purpose and Scope	220
A.	Purpose	220
B.	Scope	<del>220</del>
		220
		0
Section 5.02.	Selection Process	<del>220</del>
		220
A.	Design-Bid-Build	220
B.	Design-Build	224
C.	Prequalification	242
Section 5.03.	Exceptions	25
		3
A.	<del>A.</del> Emergencies and Calamities	253
B.	<del>B.</del> Specification of Brand or Trade Name	264
ARTICLE 6.	PROTESTS	

	264
Section 6.01. Solicitation Protests	26
4	
Section 6.02. Award Protests	27
5	
Section 6.03. Delay in Award	27
5	
Section 6.04. Remedies	285
Section 6.05. Public Documents	286
ARTICLE 7. DELEGATION OF AUTHORITY TO AWARD CONTRACTS	286
Section 7.01. Award Authorization	286
A. Delegation by General Manager	286
B. Original Contracts and Contingencies	297
C. Amendments, Change Orders, Renewals, Time Extensions & Assignments	297
Section 7.02. Contingency Release	302
8	
Section 7.03. Task Orders	312
9	
ARTICLE 8. ETHICS	320
Section 8.01. Unlawful Consideration Prohibited	320
Section 8.02. Conflicts of Interest	330
A. Compliance with the Political Reform Act	330
B. Compliance with Government Code § 1090	334
C. Requirements Applicable to Consultants	334
ARTICLE 9. DEFINITIONS	334
ARTICLE 10. MISCELLANEOUS	375
Section 10.01. Noncompliance	375
Section 10.02. Effective Date	375
Section 10.03. Repeal of Ordinance No. OCSD-427	375
Section 10.04. Certification and Publication	375

NOW, THEREFORE, the Board of Directors of the Orange County Sanitation District does hereby ORDAIN:

**ARTICLE 1. GENERAL PROVISIONS**

**Section 1.01. Purpose and Scope**

A. Purpose.

This Ordinance is intended to:

- (1) Comply with certain provisions of State law requiring the Sanitation District to adopt written purchasing procedures;
- (2) Ensure that the Sanitation District complies with State law governing the award of Contracts for Goods, Services, and Public Works Projects;
- (3) Establish procedures to ensure that the Sanitation District obtains quality goods and competent services at the best price and/or the best value;
- (4) Delegate certain spending authority to Sanitation District employees in the interest of efficient administration;
- (5) Ensure that purchasing decisions are transparent for the public; and
- (6) Ensure that Contracts are awarded through a process that is fair to prospective Contractors and in the best interests of the Sanitation District.

B. Scope.

This Ordinance governs the purchase of Goods, Services and the award of Contracts for Public Works Projects.

**Section 1.02. Title**

This Ordinance may be referred to as the Sanitation District's "Purchasing Ordinance."

**Section 1.03. Definitions**

As used throughout this Ordinance, the terms set forth in Article 9 shall have the meanings as defined therein, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular Article or provision.

**Section 1.04. Rules and Guidelines**

The General Manager shall implement the requirements of this Ordinance through policies, rules, and guidelines governing the purchase of Goods and Services, and the award of Contracts for Public Works Projects.

## **Section 1.05. Budgeted Funds**

No Contract for the purchase of Goods, Services, or Public Works Projects shall be awarded unless and until the General Manager identifies funds in the current budget that are allocated to the purchase.

## **Section 1.06. The Purchasing Manager**

### **A. Duties.**

Consistent with the provisions of this Ordinance, the Purchasing Manager shall:

- (1) Conduct the procurement of all Goods, Services, and Public Works Projects purchased by the Sanitation District; and receive from Contractor all bids, proposals or other solicitation results;
- (2) Supervise and control inventories of supplies and materials.
- (3) Determine the type of procurement, term of the contract including number of renewals and any other contractual provisions necessary and in the best interest of the Sanitation District.

### **B. Requests for Procurement.**

When a Department desires to procure Goods and/or Services, the Department Director shall file a written Requisition, in advance of a procurement process, with the Purchasing Manager. The Requisition shall describe the Goods and/or Services to be acquired. Public Works procurements require a complete Engineering Budget Approval Form or equivalent document.

## **Section 1.07. Exceptions to Competitive Selection**

Depending on the nature of the Contract and/or the circumstances, certain provisions of this Ordinance require that Contracts for Goods and/or Services be awarded based on Competitive Sealed Bids or Competitive Sealed Proposals. This Section 1.07 establishes certain general exceptions to competitive selection requirements for the procurement of Goods and Services. The exceptions set forth in this Section 1.07 do not apply to the award of Contracts for the construction of Public Works Projects.

### **A. Sole Source Procurement.**

—Notwithstanding any other provision of this Ordinance, a Contract for Goods and/or Services may be awarded based on Sole Source Procurement, without soliciting bids or proposals as might otherwise be required, if the General Manager or his designee determines in writing that it is in the best interest of the Sanitation District to award the Contract because the Goods and/or Services are (1) of a unique nature based on their quality, durability, availability, fitness or qualifications for a particular use; or (2) only available from one source.

B. Emergency Procurement.

—Notwithstanding any other provision of this Ordinance, a Contract for Goods and/or Services may be awarded through Negotiated Procurement, without soliciting bids or proposals as might otherwise be required, if the General Manager or his designee determines in writing that the Sanitation District urgently needs the Goods and/or Services in order to respond effectively to an emergency. For purposes of this Section 1.07, emergency procurements are those purchases that are required to prevent immediate interruption or cessation of necessary services or to safeguard life, property, or the public health and welfare. In addition, emergency procurements as used in this Section also include critical time sensitive purchases where time is of the essence, and the Sanitation District does not have sufficient time to solicit bids or proposals. For emergency procurements greater than \$100,000, the General Manager shall obtain the concurrence of the Chair of the Sanitation District's Board of Directors or, if the Chair is unavailable, the Vice Chair, and such action shall be ratified by the Board of Directors at its next regular meeting.

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## **Section 1.08. Evaluation Committees**

Evaluation committees convened in connection with procurements under this Ordinance shall generally be composed of full-time Sanitation District employees. In exceptional circumstances, however, the General Manager may appoint one or more persons not employed by the Sanitation District to an evaluation committee if the General Manager determines that (1) evaluating proposals in connection with a particular procurement requires specialized expertise not available among Sanitation District employees; (2) the procurement will impact another agency, and that agency desires to place a representative on the evaluation committee; or (3) it is otherwise in the Sanitation District's interest to do so.

## **Section 1.09. Severability**

If any provision of this Ordinance, or any application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this Ordinance or application to any person or circumstance which can be given effect without the invalid provision or application. The provisions of this Ordinance are declared to be severable.

## **ARTICLE 2. GOODS AND SERVICES**

### **Section 2.01. Purpose and Scope**

#### **A. Purpose.**

California Government Code Sections 54202 et seq. requires the Sanitation District to adopt written policies and procedures, including bidding requirements, governing the purchase of Goods and Services. This Article is intended to comply with Section 54202.

#### **B. Scope.**

The provisions of this Article 2 apply to Contracts for the purchase of Goods and Services other than Contracts for Professional Services (governed by Article 3) Professional Design Services (governed by Article 4), and Contracts for Public Works Projects (governed by Article 5).

### **Section 2.02. Selection Process**

Subject to the exceptions set forth in Section 2.03, the award of Contracts for the

purchase of Goods and Services shall be based on the competitive procurement methods set forth below.

A. Competitive Sealed Bids.

For each procurement, the Purchasing Manager shall:

- i.(1) Publish a Notice Inviting Bids that contains (a) a description of the Goods and/or Services required, (b) a description of the selection process, (c) bidder's security requirement, if applicable, (d) performance bond requirements, if applicable, and (e) such provisions, renewals, terms, and conditions, consistent with this Ordinance, that the Purchasing Manager determines are necessary, desirable, and/or advantageous to the Sanitation District;
- ii.(2) Receive the Competitive Sealed Bids publicly at the time and place designated in the Notice Inviting Bids, open all bids concurrently, and record the amount of each bid; and
- iii.(3) Determine whether the bids are responsive to the Notice Inviting Bids.
- iv.(4) Award: After the bids are opened, take one of the following actions:
  - (1)(a) Award the Contract to the lowest Responsive and Responsible Bidder;
  - (2)(b) Reject any and all bids presented and/or re-advertise the bid; or
  - (c) Declare that the Goods and/or Services may be acquired at a lower cost by negotiation in the open market and authorize the procurement in that manner.
  - (0) —

~~C.B. Equal Bids.~~

~~If two or more Responsible Bidders submit the same lowest bid, the District may, in its discretion, accept either bid or a lower bid, if any, as may be obtained from one of the bidders through negotiation. If the Sanitation District determines 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, then the Sanitation District may award the bid based on Local Preference. If neither or both bidders are Local Businesses, the Sanitation District shall award the bid based on the drawing of lots.~~

C. Multi-Step Sealed Bidding.

The Purchasing Manager may determine that a prequalification process is necessary and desirable for a particular procurement. The multi-step sealed bidding process requires the Purchasing Manager to (1) issue a Request for Qualifications requesting the submission of qualifications; and (2) issue a

subsequent Notice Inviting Bids for priced offers from those Contractors whose initial submissions were deemed qualified under the criteria set forth in the initial Request for Qualifications. Award under this process shall be based on the lowest Responsive and Responsible Bidder.

D. Request for Proposals.

If the Purchasing Manager determines in writing that the Competitive Sealed Bids procedure is not practical and/or not advantageous for the Sanitation District in a particular case, one or more Contracts subject to this Article may be awarded based on Competitive Sealed Proposals. The Request for Proposals process may be used (1) for Goods and/or Services that prove difficult to quantify or describe, where proposers are provided the opportunity to offer different approaches or solutions; and/or (2) for critical, routine or recurring goods or services that require consideration of the broadest possible range of competing services, products and materials available, fitness of purpose, performance reliability, standardization, life cycle costs, delivery timetables, reliable supply, support logistics, diversification of available sources and/or other similar factors in addition to the price in the award of these contracts. Award under this process shall be based upon criteria that provide the best value for the Sanitation District, wherein best value is not solely determined by price.

**Section 2.03. Exceptions**

A. Small Procurements.

- (1) Procurements of \$10,000 or Less. Contracts subject to this Article 2 with an estimated value of \$10,000 or less may be awarded without Competitive Sealed Bids if the Purchasing Manager determines that a Competitive Sealed Bids process would not result in a lower overall cost to the Sanitation District.
- (2) Procurements of \$50,000 or Less. Contracts subject to this Article 2 with an estimated value of \$50,000 or less may be awarded by (a) soliciting at least three bids from identified vendors, and (b) awarding the Contract to the lowest Responsive and Responsible Bidder. If the Purchasing Manager cannot obtain at least three bids, the Contract may be awarded to the lowest Responsive and Responsible Bidder as long as the Purchasing Manager determines that the bid amount is fair and reasonable.
- ~~(3)~~ Piecemealing Prohibited. Procurements shall not be artificially divided into different individual Contracts so as to keep each Contract amount below one of the monetary thresholds set forth in this Part A.

(3)

B. Cooperative Purchases.

When another public agency or government purchasing cooperative organization has awarded a Contract for Goods and/or Services based on Competitive Sealed Bids or Competitive Sealed Proposals, and the agency or organization followed a process substantially similar to the process described in Section 2.02, the Sanitation District may acquire Goods and/or Services under that Contract without obtaining Competitive Sealed Bids or Competitive Sealed Proposals. The Sanitation District may enter into Contracts with other public agencies, government purchasing cooperative organizations within the United States, and/or Contractors for this purpose.

C. Critical Time-Sensitive Procurements.

The Purchasing Manager may purchase Goods and/or Services through Negotiated Procurement if the Purchasing Manager determines that time is of the essence in the purchase of the Goods and/or Services. For critical time-sensitive procurements valued at more than \$100,000, the General Manager shall obtain the concurrence of the Chair of the Sanitation District's Board of Directors or, if the Chair is unavailable, the Vice Chair.

D. Renewals.

The Purchasing Manager may exercise any options to renew as may be included in existing Contracts without observing the bidding procedures prescribed in Section 2.02 and Section 2.03

E. Sole Source and Emergency Procurements.

A Contract for the purchase of Goods and/or Services may be awarded without soliciting competitive bids if any of the exceptions set forth in Section 1.07 apply.

F. Master Contracts; Maintenance and Repair Services Less Than or Equal to \$300,000.

The Purchasing Manager may purchase maintenance and repair Services estimated to cost less than or equal to \$300,000 through the master contract procedures set forth below.

- (1) Request for Qualifications. If a master contract is let for maintenance and repair Services, then at least once every three (3) years, the Purchasing Manager shall prepare and distribute a Request for Qualifications for the maintenance and repair Services required by the Sanitation District. Each Request for Qualifications shall describe the selection criteria that will be used to determine whether suppliers or firms are eligible for the prequalified list. The Request for Qualifications shall require the following information,

at a minimum, from proposers:

- (a) The firm's demonstrated competence and specialized expertise necessary to perform the type of Service needed;
  - (b) The experience, training, and skills of the key personnel that will perform and manage the work for the Sanitation District;
  - (c) The firm's capacity and resources to perform the Services required within the specified period of time. The firm must demonstrate that it will provide a sufficient number of qualified staff, equipment, and facilities as applicable.
- (2) Evaluation Committee. The Purchasing Manager shall convene an evaluation committee to evaluate the responses to each Request for Qualifications. The Purchasing Manager shall chair the committee, and the Director of the Department requesting the Procurement shall appoint the remaining members. Each evaluation committee shall determine whether each supplier or firm has the demonstrated competence and qualifications to provide the Services necessary for the satisfactory performance of the Services required.
  - (3) Lists. Based on the recommendations of the evaluation committee, with the concurrence of the Department Director, the Purchasing Manager shall establish a list of at least three (3) prequalified Contractors. If the Sanitation District uses its best efforts to outreach to potential Contractors, and cannot obtain the minimum of three (3) prequalified Contractors, the Purchasing Manager shall document the outreach and responses received. The Sanitation District may then proceed with award to fewer than three (3) prequalified firms. Each list shall be used for a maximum of three (3) years. No later than three (3) years after establishing a prequalified list, the Purchasing Manager must issue a new Request for Qualifications and establish a new ~~list, if~~ list if such goods and/or services are required.
  - (4) Master Contract. Master Contracts with firms on the prequalified list shall be awarded by the Board of Directors in the amount not to exceed the program budget approved by the Board of Directors. The original term of such Contracts shall be for one (1) year, with an option to renew each Contract for up to two (2) additional one-year renewal periods.
  - (5) Task Orders. The Department Director shall notify the Purchasing Manager when Services subject to this subsection 2.03(F) are required for a maintenance or repair project. Proposals shall be solicited from all the firms on the prequalified list and one of the firms shall be selected pursuant to the process set forth in Section 2.02. Individual Task Orders in an amount not to exceed \$300,000 will be awarded for each project.

## ARTICLE 3. PROFESSIONAL SERVICES

### Section 3.01. Purpose and Scope

#### A. Purpose.

This Article 3 is intended to ensure that the Sanitation District ~~retains~~obtains Professional Services at fair and reasonable prices based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

#### B. Scope.

The provisions of this Article 3 apply to the award of Contracts for Professional Services and incidental services that members of a Professional Service firm, and those in their employ, may logically perform. The provisions of this Article 3 do not apply to the award of Contracts for Professional Design Services (governed by Article 4).

### Section 3.02. Selection Process

Contracts for Professional Services shall be awarded pursuant to the following procedures:

#### A. Request for Proposals.

The Purchasing Manager shall prepare a Request for Proposals in consultation with the Director of the Department requesting the Procurement. The Purchasing Manager, with the concurrence of the Director of the Department requesting the Procurement, may select a limited number of Professional Service firms to receive the Request for Proposals. The Purchasing Manager may issue a Request for Qualifications to prospective Contractors as a means of identifying prospective recipients. The Purchasing Manager may publish notice of the Request for Proposals or Request for Qualifications.

#### B. Evaluation and Ranking of Proposals.

All responsive proposals shall be evaluated and ranked, from most qualified to least qualified, based on each firm's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. The Purchasing Manager may establish a committee to conduct the evaluation. The Purchasing Manager or evaluation committee, if any, may ~~discuss each proposal~~communicate with ~~its~~a proposal's~~proposal's~~ author to seek clarification or otherwise obtain relevant information.

C. Negotiation of Contract.

The Purchasing Manager shall negotiate a Contract with the firm deemed to be most qualified at a price that the Purchasing Manager, with the concurrence of the Director of the Department requesting the Procurement, deems to be fair and reasonable. If the Purchasing Manager determines that it is in the best interest of the Sanitation District to enter into Contracts with two or more firms, the Purchasing Manager shall negotiate with the desired number of firms starting with the most qualified. The Purchasing Manager shall proceed down the list from most to least qualified until he or she has concluded negotiations with the desired number of firms at fair and reasonable prices. The Sanitation District may, in its sole discretion, reject all proposals.

**Section 3.03. Exceptions**

A. Sole Source and Emergency Procurements.

A Contract for Professional Services may be awarded without soliciting Competitive Sealed Proposals if the Purchasing Manager makes one of the determinations set forth in Section 1.07.

B. Contractors Reporting to the Board.

The provisions of this Article 3 shall not apply to the retention of Professional Service firms or individuals that are selected by the Board and report directly to the Board. For such Contracts, the Board shall determine the method of selection, consistent with the requirements of applicable law.

C. Procurements of \$10,000 or less.

Contracts subject to this Article 3 with an estimated value of \$10,000 or less may be awarded without following the Request for Proposal/Request for Qualifications process if the Purchasing Manager determines that an RFP/RFQ process would not result in a lower overall cost to the Sanitation District.

D. Master Contracts; Professional Services Less Than or Equal to \$100,000.

The Purchasing Manager may purchase Professional Services estimated to cost less than or equal to \$100,000 through the master contract procedures set forth in Section 2.03(F), provided that individual task orders shall not exceed \$100,000 for each project.

E. Master Contracts: Professional Services Qualified Lists.

The Purchasing Manager may establish qualified lists of Professional Services through the master contract procedures set forth below.

- (1) Request for Qualifications. If a master contract is let for Professional Services, the Purchasing Manager shall prepare and distribute a Request for Qualifications for the Professional Services required by the Sanitation District. Each Request for Qualifications shall describe the selection criteria that will be used to determine whether firms are eligible for the qualified list. The Request for Qualifications shall require the following information, at a minimum, from proposers/firms:
  - (a) The firm's demonstrated competence and specialized expertise necessary to perform the type of Service needed;
  - (b) The experience, training, and skills of the key personnel that will perform and manage the work for the Sanitation District;
  - (c) The firm's capacity and resources to perform the Services required within the specified period of time. The firm must demonstrate that it will provide a sufficient number of qualified staff, equipment, facilities or other requirements as applicable.
- (2) Evaluation Committee. The Purchasing Manager shall convene an evaluation committee to evaluate the responses to each Request for Qualifications. The Purchasing Manager shall chair the committee, and the Director of the Department requesting the Procurement shall appoint the remaining members. Each evaluation committee shall determine whether each firm has the demonstrated competence and qualifications to provide the Services necessary for the satisfactory performance of the Services required.
- (3) Lists. The Purchasing Manager in conjunction with the Department Director shall determine the number of firms needed on the list based on anticipated work. If the Sanitation District uses its best efforts to outreach to potential Contractors, and cannot obtain the minimum number of firms specified in the RFQ, the Purchasing Manager shall document the outreach efforts and responses to the procurement file. The Sanitation District may proceed with award to fewer firms. No later than ~~three-five~~ (53) years after establishing a qualified list, the Purchasing Manager must issue a new ~~Request for Qualifications~~ RFQ and establish a new list, if such services are still required.
- (4) Master Contract. Master Contracts with firms on the qualified list shall be awarded by the Board of Directors in the amount not to exceed the program budget approved by the Board of Directors. The original term of such Contracts shall be for ~~one-three~~ (34) years, with an option to renew each Contract for up to two (2) additional one-year renewal periods.
- (5) Task Orders. The Department Director shall notify the Purchasing Manager when Services are subject to this subsection 3.03(E). The Purchasing



Manager shall follow a competitive selection process or cycle through on a rotation basis to one firm at a time. The Request for Qualifications shall specify any competitive process and/or rotation selection process, including selection of a single firm due to a unique qualification or circumstance, subject to the best interests of the Sanitation District in any particular case.

F. Renewals.

The Purchasing Manager may exercise any options to renew as may be included in existing Contracts without initiating the procurement procedures prescribed in Section 3.02 and Section 3.03.

## ARTICLE 4. PROFESSIONAL DESIGN SERVICES

### Section 4.01. Purpose and Scope

A. Purpose.

This Article 4 is intended to ensure that the Sanitation District ~~retains~~obtains Professional Design Services at fair and reasonable prices based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

B. Scope.

This Article 4 applies to the selection of Contractors for Professional Design Services.

### Section 4.02. Selection Process

A. Competitive Selection.

All Professional Design Services estimated to be greater than \$300,000 shall be awarded based on Competitive Sealed Proposals. All Professional Design Services with an estimated value of \$300,000 or less shall have a separate selection process based upon a master contract procedure whereby the Sanitation District shall solicit ~~Competitive Sealed Proposals~~Statements of Qualifications and award one or more master contracts not to exceed \$600,000 per year.

B. Professional Design Services Greater Than \$300,000.

The requirements set forth in this subsection 4.02(B) shall apply to the purchase of Professional Design Services estimated to cost more than \$300,000.

- (1) Annual List. Each Director of a Department that utilizes Professional Design Services ~~shall~~may file annually with the Purchasing Manager a list of specific disciplines for which Professional Design Services may be required. The Purchasing Manager may from time to time prepare and distribute a Request for Qualifications for the professional disciplines or project design services required by the Sanitation District subject to this Part B. For each Request for Qualifications issued, the Purchasing Manager shall evaluate the responses, identify qualified firms, and maintain the responses of the qualified firms on file to be used in the Request for Proposals process described below.
- (2) Request for Proposals. The Purchasing Manager, in consultation with the Director of Engineering, shall issue a Request for Proposals for the Professional Design Services requested. Multiple projects may be bundled into one Request for Proposals such that multiple Contract awards may result from one Request for Proposals and selection may be based upon specialized services.
- (3) Content of Request for Proposals. Each Request for Proposals shall describe the Professional Design Services required and the selection process. Each Request for Proposals shall also set forth such provisions, terms, and conditions, consistent with this Ordinance, that the Purchasing Manager, in consultation with the Director of Engineering, determines are necessary, desirable, and/or advantageous to the Sanitation District. Each Request for Proposals shall require that proposals contain, at a minimum, the following information:
  - (a) The firm's qualifications for performing the proposed work.
  - (b) The firm's relevant experience and performance on similar projects.
  - (c) The firm's ability to complete the work within the time allotted.
  - (d) The personnel that will be assigned to the project.
  - (e) The estimated number of hours that each member of the team will spend on the project.
  - (f) A statement that the firm's engagement for the project would not create a conflict of interest.
  - (g) Any other information required to properly evaluate the firm's qualifications and experience with similar projects.

- (h) Proposals for construction management services shall demonstrate that the designated personnel have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.
  - (i) A fee proposal, based on the method of compensation specified in the Request for Proposal, and an estimate of total fees, enclosed in a separately sealed envelope. Commonly used methods of compensation for Professional Design Service Contracts include (i) cost plus fixed fee with a maximum amount; (ii) per diem rate(s) with a maximum amount; (iii) a lump sum (fixed) fee; and (iv) cost of time and materials.
- (4) Publication of Request for Proposals. The Sanitation District shall publicize publish each Request for Proposals by two or more of the following methods:
- (a) Advertising in print or electronic media; and/or
  - (b) Mailing the Request for Proposals to each Contractor firm that has been identified as a qualified firm as set forth in subsection 4.02(B)(1) who has submitted a Statement of Qualifications; and/or
  - (c) Mailing the Request for Proposals to each vendor registered in the applicable category, based on the services identified in the Request for Proposals, in the Sanitation District's on-line vendor database.
- (5) Staff Evaluation Committee. The Purchasing Manager shall convene an evaluation committee to evaluate the proposals.
- (a) Management and Composition. The Purchasing Manager shall serve as chair of the evaluation committee. The Director of Engineering shall appoint the other members of the committee.
  - (b) Ranking of Firms. All proposals shall be evaluated and ranked, from most qualified to least qualified, based on each firm's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.
  - (c) Interviews. At its discretion, the evaluation committee may interview one or more of the firms that have submitted proposals.
  - (d) Report. The evaluation committee shall prepare a written report for the Purchasing Manager and the Director of Engineering setting forth, at a minimum, the ranking of firms from most qualified to least qualified.
- (6) Negotiations. The Purchasing Manager and the Director of Engineering shall

negotiate a Contract with the firm that the evaluation committee deems to be most qualified. Fee proposals shall not be opened until the most qualified ~~highest ranked~~ proposer is identified. Only the ~~highest ranked~~ most qualified proposer's fee proposal will be opened. If those negotiations fail, the Purchasing Manager shall negotiate with the second most qualified firm, and so on, until an agreement is reached. The Purchasing Manager shall proceed down the list from most to least qualified until he or she has concluded negotiations with the desired number of firms at fair and reasonable prices. The Director of Engineering shall make a written determination that the negotiated fee is fair and reasonable. All unopened price proposals will remain unopen in the Sanitation District's web-based system ~~be returned to the firm that submitted~~ ~~it~~. The Sanitation District may, in its sole discretion, reject all proposals.

C. Master Contracts; Professional Design Services Less Than or Equal to \$300,000.

The requirements set forth in this subsection 4.02(C) shall apply to the purchase of Professional Design Services estimated to cost less than or equal to \$300,000 for each individual project.

- (1) Request for Qualifications. At least once every ~~five~~ three (~~5~~ 3) years, the Purchasing Manager shall prepare and distribute a Request for Qualifications for each professional discipline or project design service ~~—~~ required by the Sanitation District subject to this subsection. Each Request for Qualifications shall describe the selection criteria that will be used to determine whether firms are eligible for the prequalified list. The Request for Qualifications shall require the following information, at a minimum, from ~~proposers~~ firms:
  - (a) The firm's demonstrated competence and specialized expertise necessary to perform the type of services needed;
  - (b) The education, experience, training, and skills of the key personnel that will perform and manage the work for the Sanitation District;
  - (c) The firm's capacity and resources to deliver the services required within the specified period of time, including but not limited to a sufficient number of qualified staff, computer hardware, computer software, special equipment and facilities as applicable; and
  - (d) The proximity of the firm's office(s) to the Sanitation District, the specific location of key personnel, and the firm's experience and familiarity with the operation of local government.
- (2) Evaluation Committee. The Purchasing Manager shall convene an evaluation committee to evaluate the responses to each Request for Qualifications. The Purchasing Manager shall chair the committee, and the Director of Engineering shall appoint the remaining members. Each evaluation committee shall determine whether each firm has the demonstrated competence and professional qualifications necessary for the satisfactory

performance of the services required.

- (3) Lists. Based on the recommendations of the evaluation committee, with the concurrence of the Director of Engineering, the Purchasing Manager shall establish a list of prequalified Contractors within each discipline/category. The RFQ will identify the number of anticipated firms on the prequalified list. The Purchasing Manager in conjunction with the Director of Engineering shall determine the number of firms needed on the list based on anticipated work. If the Sanitation District cannot obtain the minimum number of firms specified in the RFQ, the Purchasing Manager shall record the outreach efforts and responses to the procurement file. The Sanitation District may proceed with award to fewer firms. Each list shall be used for a maximum of 5 (five)3 years. No later than 5 (five)3 years after establishing a prequalified list for each service, the Purchasing Manager shall issue a new Request for Qualifications and establish a new list if such services are still required.
- (4) Master Contract. Master Contracts with firms on the prequalified list shall be awarded by the Board of Directors in an amount not to exceed \$600,000 per year. The original term of such Contracts shall be for ~~one~~3 (three) years, with an option to extend each Contract for up to two (2) additional one-year renewal periods.
- (5) Task Orders. The Director of Engineering shall notify the Purchasing Manager when Professional Design Services subject to this subsection are required for a project. Proposals shall be solicited, with price proposals submitted in a separate sealed envelope, from at least two firms on the prequalified list and one of the firms shall be selected pursuant to the process set forth in subsections 4.02(B)(5) and 4.02(B)(6). In determining which firms will be invited to submit proposals, the Purchasing Manager shall follow the selection or rotation process, if any, set forth in the Request for QualificationsProposals, subject to the best interests of the Sanitation District in any particular case. Individual Task Orders in an amount not to exceed \$300,000 will be awarded for each project. The Director of Engineering shall make a written determination that the negotiated fee is fair and reasonable for the task. For Task Orders estimated to cost \$25,000 or less, the Director of Engineering, with concurrence of the Purchasing Manager, may solicit a proposal from 1 (one) firm on the prequalified list. The price proposal shall be submitted in a separate sealed envelope. The Director of Engineering shall issue a written determination that (i) identifies the basis for selection, including but not limited to the specialized qualifications of the 1 (one) firm, and (ii) states that the negotiated price is fair and reasonable. ~~Individual Task Orders in an amount not to exceed \$300,000 will be awarded for each project. The Director of Engineering shall make a written determination that the negotiated fee is fair and reasonable for the task.~~

### **Section 4.03. Exceptions**

#### **A. Sole Source and Emergency Procurements.**

Contracts for Professional Design Services may be awarded without soliciting Competitive Sealed Proposals if the Purchasing Manager makes one of the determinations set forth in Section 1.07.

B. Continuation of Additional Services.

A new contract for additional services related to work already performed under an existing Contract for Professional Design Services may be awarded without observing the bidding procurement procedures prescribed in subsection 4.02(B) or subsection 4.02(C), as applicable. In connection with any such new contract, the Director of Engineering shall determine in writing that (1) it is in the Sanitation District's best interests to have the original firm perform additional, related services, and (2) the negotiated price is fair and reasonable.

C. Procurements of \$10,000 or less.

Contracts subject to this Article 4 with an estimated value of \$10,000 or less may be awarded without following the Request for Proposal/Request for Qualifications process if the Purchasing Manager determines that an RFP/RFQ process would not result in a lower overall cost to the Sanitation District.

## ARTICLE 5. PUBLIC WORKS PROJECTS

### Section 5.01. Purpose and Scope

A. Purpose.

This Article 5 is intended to implement state statutes that govern the Sanitation District's award of construction Contracts for Public Works Projects.

B. Scope.

This Article 5 applies to the Sanitation District's award of Contracts for the construction of Public Works Projects exceeding \$35,000 other than sewerage maintenance or repair projects pursuant to Public Contract Code section 20783 (Projects estimated at \$35,000 or less, and sewerage maintenance or repair projects, may be processed pursuant to Article 2).

### Section 5.02. Selection Process

A. Design-Bid-Build.

(1) Competitive Sealed Bids. For projects subject to Public Contracts Code section 20783, the Sanitation District shall select firms for Public Works Projects pursuant to the process described in this subsection 5.02(A).

(a) Notice Inviting Bids. For each prospective Contract, the Purchasing Manager shall publish a ~~n~~Notice ~~i~~n~~Inviting~~ ~~b~~Bids as required by Public Contract Code Section 20783.

~~(i) Manner of Publication. Each ~~n~~Notice ~~i~~n~~Inviting~~ ~~b~~Bids shall be published in a newspaper of general circulation at least 10 days before the date for the opening of bids consistent with the requirements set forth in Public Contracts Code section 20783, as may be amended or superseded from time to time. Additionally, the Sanitation District may publish each notice inviting bids, on industry bulletin boards, the Sanitation District's on-line vendor database, and/or on the Sanitation District's website, at least 10 days before the date for the opening of bids consistent with the requirements set forth in Public Contracts Code section 20783, as may be amended or superseded from time to time.~~

~~(i)~~

(ii) Contents. Each Notice Inviting Bids shall:

1. Establish a deadline for the receipt of bids that is at least 10 calendar days after the first publication of the Notice Inviting Bids.

~~4.~~

2. Provide that the Sanitation District, in its sole discretion, may reject any and all bids;

3. Set forth a procedure that shall be followed in the event of a tie between the lowest Responsive and Responsible bidders;

4. Require bidders to post a bidder's security;

5. State that if a Contract is awarded to the bidder, a payment bond is required pursuant to Civil Code section 9550, as well as a performance bond;

5.

6. Contain detailed plans and specifications for the project. Subject to the exceptions set forth in subsection 5.03(B), the specifications shall not call for a designated material, product, thing, or service by specific brand or trade name

unless the Sanitation District complies with the requirements under California Public Contract Code section 3400 *et seq.*; and

7. Contain whatever provisions, consistent with this Ordinance, the Purchasing Manager determines are necessary, desirable, and/or advantageous to the Sanitation District.
- (b) Bid Opening. The Purchasing Manager shall open the bids publicly in the presence of one or more witnesses at the time and place designated in the Notice Inviting Bids. A web-based system may be used in lieu of in person bid opening. The Purchasing Manager shall record the amount of each bid together with the name of each bidder. This record, and each bid, shall be considered public records and shall be available to the public at the point in time specified in the Notice Inviting Bids and consistent with the Public Records Act.
  - (c) Rejection of Bids. The Sanitation District may reject all bids received for a particular project and:
    - (i) Re-advertise for bids; or
    - (ii) Authorize construction of the project through a Negotiated Procurement of day labor and/or materials or supplies, if the Board adopts a resolution by a four-fifths vote declaring that (i) the work can be performed more economically by day labor, and/or (ii) the materials or supplies can be obtained at a lower price in the open market.
  - (d) No Bids. If the Sanitation District does not receive any responsive and responsible bids for a particular project, the Sanitation District's Board of Directors may authorize the Purchasing Manager to conduct a Negotiated Procurement, and present his or her recommendation to the Board for approval.
  - (e) Award to Lowest Responsive and Responsible Bidder. Unless the Sanitation District rejects all bids, the Contract shall be awarded to the lowest Responsive and Responsible Bidder. ~~If two or more Responsible Bidders submit the same lowest bid, the District may, in its discretion, accept either bid or a lower bid, if any, as may be obtained from one of the lowest bidders through negotiation.~~ If the Sanitation District determines 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, then the Sanitation District may award the bid based on Local Preference. If none or all bidders are Local Businesses, the Sanitation District shall award the bid based on the drawing of lots, identifying each eligible bidder on individual slips of



paper and then randomly drawing one of the slips of paper. If the lowest Responsive and Responsible Bidder refuses to enter into a Contract, then the lowest Responsive and Responsible Bidder shall forfeit its bidder's security, and the Contract shall be awarded to the next lowest Responsive and Responsible Bidder.

B. Design-Build.

As may be authorized by the Public Contract Code or other statute, the Sanitation District may utilize a design-build selection process for the award of Public Works Contracts.

C. Prequalification.

The Purchasing Manager may limit the field of prospective bidders for Public Works Contracts by prequalifying Contractors pursuant to California Public Contract Code Section 20101 and the requirements of this subsection 5.02(C).

Prequalification shall only be required when the Purchasing Manager or the Director of Engineering determines that prequalification is necessary or desirable. The Purchasing Manager may (i) prequalify a list of Contractors for the right to bid on any specific Public Works Project, and/or (ii) prequalify lists of Contractors for the right to bid on unspecified projects of a certain type or size pursuant to Public Contracts Code section 20101(c). If the Purchasing Manager elects to prequalify lists of Contractors for the right to bid on unspecified projects of a certain type or size, he or she shall conduct a prequalification process quarterly, and all qualifications shall be valid for one year. For each prequalified list of either type, the Purchasing Manager shall evaluate and prequalify Contractors pursuant to the following procedures:

- (1) Questionnaires and Rating Criteria. The Purchasing Manager shall develop a questionnaire and rating criteria for each prequalification. All criteria shall be relevant and objective. The Purchasing Manager may rely on the Department of Industrial Relations model guidelines, questionnaires, and forms, and/or establish additional or modified criteria.
- (2) Statements of Qualifications. The Purchasing Manager shall solicit Statements of Qualifications from prospective bidders.
- (3) Evaluation Committee. The Purchasing Manager shall convene an evaluation committee to evaluate each Statement of Qualifications. The Purchasing Manager shall chair the committee, and the Director of Engineering shall appoint the remaining committee members. The evaluation committee shall review each Statement of Qualifications, rate the Contractors according to their qualifications and objective criteria, and determine which Contractors are qualified and which Contractors are not qualified.

~~(3)~~

- ~~(4)~~ Notice of Determination. When the evaluation committee completes its

- review, the Purchasing Manager shall send each Contractor written notice
- (4) of the committee's determinations regarding that Contractor. If the evaluation committee determines that a Contractor is not qualified, the written notice shall also set forth the basis for that determination and any relevant supporting evidence that the evaluation committee considered.
- (5) Appeal Process.
- (a) Notice of Appeal. Any Contractor may appeal to the General Manager any determination of the evaluation committee, including any rating assigned to the Contractor and any decision to disqualify the Contractor, by filing a written notice of appeal within seven (7) working days after the Purchasing Manager mails the notice described in subsection 5.02(C)(4).
- (b) Hearing. Within five (5) working days of the receipt of an appeal, the General Manager, or a designee of the General Manager who has not been involved in the evaluation of qualifications of Contractors for the project, shall conduct a hearing on the appeal. During the hearing, the affected Contractor or subcontractor shall have the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the General Manager or the General Manager's designee as to why the prospective bidder should be found qualified.
- (c) Decision. Within five (5) working days of the conclusion of the hearing, the General Manager or the General Manager's designee shall issue a written decision on the appeal. The decision of the General Manager or the General Manager's designee shall be final.

### **Section 5.03. Exceptions**

#### **A. Emergencies and Calamities.**

- (1) The provisions of this subsection 5.03(A) apply in the event of an emergency or calamity involving a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. In the event of such an emergency or calamity, the Sanitation District may, through Negotiated Procurement, award Contracts to repair or replace facilities, take any directly related and immediate action required by the emergency or calamity, and procure the necessary equipment, services, and supplies for those purposes.
- (2) The General Manager may take the actions described in subdivision (1) above, with the concurrence of the Chair of the Board of Directors and/or the Vice Chair, without obtaining prior approval of the Sanitation District's Board of Directors. In taking any such action, the General Manager shall follow the procedures set forth in Public Contracts Code Section 22050.

~~(3)~~—In the alternative, the Sanitation District's Board of Directors may, by

resolution adopted by a four-fifths vote, take the actions described in subdivision\_

(3) above. In taking any such action, the Sanitation District shall follow the procedures set forth in Public Contracts Code 22050.

**B. Specification of Brand or Trade Name.**

Notwithstanding subsection 5.02(A)(1)(a)(ii)(6), the specifications for a Public Works Contract may call for a designated material, product, thing, or service by specific brand or trade name without inserting the words "or equal" if the Sanitation District complies with the requirements of the California Public Contract Code section 3400 *et seq.* The General Manager is authorized to make the findings required under California Public Contract Code section 3400 *et seq.* The Notice Inviting Bids or Request for Proposals shall state that a particular material, product, thing, or service is necessary or desirable for any of the following purposes:

- (1) In order that a field test or experiment may be made to determine the product's suitability for future use;
- (2) In order to match other products in use on a particular public improvement either completed or in the course of completion;
- (3) In order to obtain a necessary item that is only available from one source;
- (4) In order to respond to an emergency declared by the Sanitation District, but only if the declaration is approved by a four-fifths vote of the Sanitation District's Board of Directors; or
- (5) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the Sanitation District.

**ARTICLE 6. PROTESTS**

The Sanitation District shall afford Interested Parties an opportunity to protest the solicitation of bids and proposals and the award of contracts as set forth in this Article 6. The General Manager shall adopt detailed protest procedures consistent with this Article 6. The protest procedures governing any particular procurement shall be set forth in the Notice Inviting Bids or the Request for Proposals, as applicable.

**Section 6.01. Solicitation Protests**

- A. Interested Parties may file a Solicitation Protest Statement with the Purchasing Manager on the grounds that a free and open competition has not taken place, or

cannot take place, and/or that a particular specification or requirement is impractical, unduly restrictive, or ambiguous. Each Notice Inviting Bids/Invitation for Bids and Request for Proposals shall identify the date and time that the Solicitation Protest Statement is due, the information required to be included in the Solicitation Protest Statement, the evaluation process, and the types of remedies available.

- B. The Purchasing Manager shall evaluate each Solicitation Protest Statement and determine what actions, if any, will be taken to remedy any deficiency. The decision of the Purchasing Manager shall be final.

### **Section 6.02. Award Protests**

- A. In connection with any competitive selection process, any Interested Party may file an Award Protest Statement with the Purchasing Manager on the ground that a free and open competition has not taken place in connection with the award recommendation. The Purchasing Manager shall not, however, consider any protest based on a finding that a bid or proposal is not responsive.
- B. Each Notice Inviting Bids and Request for Proposals shall identify the deadline for Award Protest Statements and describe the information required to be included in any Award Protest Statement, the evaluation process, the appeal process, and the types of remedies available.
- C. The Purchasing Manager shall evaluate each Award Protest Statement and determine what actions, if any, will be taken to remedy any deficiency.
- D. If the Protestor wishes to appeal, the Purchasing Manager's decision on an Award Protest Statement, the appeal shall be submitted to the Director of Finance and Administrative Services and the Director of the Department requesting the Procurement. The Director of Finance and Administrative Services and the Director of the Department requesting the Procurement shall evaluate each Award Protest Statement and determine whether to uphold or reject the Purchasing Manager's determination. For Contracts to be awarded by Sanitation District staff, the decision of the Director of Finance and the Director of the Department requesting the Procurement shall be final. For Contracts to be awarded by the Board of Directors, the Board may consider any Award Protest Statements in connection with its consideration of the Contract.

### **Section 6.03. Delay in Award**

- A. Execution of any proposed contract shall be delayed pending resolution of any protests unless one or more of the following conditions is present:
  - (1) The items or services being procured are urgently required;
  - (2) Delivery or performance will be unduly delayed by failure to make an award promptly; or

(3) Failure to make prompt award will otherwise cause undue harm to the Sanitation District.

~~(3)~~

#### **Section 6.04. Remedies**

A. If the final decision maker determines that the award or proposed award was not made in accordance with applicable statutes, regulations, policies and/or procedure, the Sanitation District, in its sole discretion, may grant any of the following remedies or any other remedy it deems appropriate:

- (1) Prior to award, the Sanitation District may issue a new solicitation, make a new selection/award recommendation, or award a contract consistent with applicable statutes, regulations, policies and procedures;
- (2) Take no further action; or
- (3) Take any other action that is permitted by law to promote compliance with applicable statutes, regulations, policies and/or procedure.

B. In determining the appropriate remedy, if any, the Sanitation District shall consider all the circumstances surrounding the Notice Inviting Bids/Invitation for Bids or Requests for Proposal and/or award, including, but not limited to:

- (1) The seriousness of any deficiency found to exist in the contracting process;
- (2) The effect of the action on the competitive process;
- (3) Any urgency surrounding the contract requirement; and
- (4) The effect that implementing the remedy will have on the Sanitation District.

C. Nothing contained herein shall be construed to act as a limitation on the Sanitation District's choice of remedies or confer any right upon any Interested Party or affected party to a remedy.

~~C.~~

#### **Section 6.05. Public Documents**

Solicitation Protest Statements and Award Protest Statements are public documents. The Sanitation District will notify the affected parties when a protest has been submitted, and will provide copies of the Protest Statements to the affected parties upon written request.

### **ARTICLE 7. DELEGATION OF AUTHORITY TO AWARD CONTRACTS**

This Article 7 applies to all Contracts for Goods, Services, and Public Works Projects entered into by the Sanitation District.

## Section 7.01. Award Authorization

### A. Delegation by General Manager.

The General Manager shall establish written procedures governing the delegation of authority to the Purchasing Manager to award and execute Contracts, Amendments, Change Orders, Renewals, Time Extensions and Assignments consistent with this Ordinance. Upon delegation of authority by the General Manager each Department Director may further delegate authority to initiate a written Requisition consistent with the General Manager's written procedures.

### B. Original Contracts, Contingencies and Renewals

The Board of Directors hereby delegates the authority to award Contracts within specified limits as follows:

<b>Delegated Authority</b>	<b>Authorized Action</b>
General Manager/ Assistant General Manager	(1) Authorization to approve and execute Contracts and applicable Renewals for budgeted procurements less than or equal to \$100,000.  (2) All new procurements between \$50,000 and \$100,000 are to be reported to the Board of Directors on a quarterly basis.
Standing Committees	(1) Authorization to approve and execute Contracts and applicable Renewals for budgeted procurements greater than \$100,000 and up to or equal to \$200,000.  (2) Authorization to approve Contingency up to 50%, for a total spending authority of up to \$300,000 for each Contract.
Board of Directors	Authorization to approve and execute Contracts and applicable Renewals for budgeted procurements up to or greater than \$200,000, including Contingency.

### C. Amendments, Change Orders, Renewals, Time Extensions and Assignments

The Board of Directors hereby delegates the authority to approve Amendments, Change Orders, Renewals, Time Extensions and Assignments in any amount as

follows:

<b>Delegated Authority</b>	<b>Authorized Action</b>
General Manager/ Assistant General Manager	<p>(1) Authorization to approve and execute Amendments and Change Orders as long as the Amendment or Change Order is recommended by the applicable Department Director, and (a) the Amendment or Change Order does not change the contract price or the new contract price is within the delegated authority, or (b) the Amendment or Change Order is within the approved contingency.</p> <p>(2) Authorization to approve and execute any Renewals that were originally approved by the General Manager, Standing Committee and/or Board of Directors.</p> <p>(3) Authorization to approve and execute Amendments and Change Orders for Contract Time Extensions (a) without any increase in Contract price; or (b) with an increase in Contract price within the approved Contingency originally approved by the General Manager, Standing Committee and/or Board of Directors.</p> <p>(4) Authorization to approve and execute all Assignments unless determined by the General Manager that the assignment contains material changes and requires approval of the awarding authority.</p> <p>(5) Authorization to approve and execute Amendments to chemical Contracts unless the Contract unit price has increased beyond the unit price contingency approved by the <u>Sanitation</u> District's Standing Committee and/or Board of Directors.</p> <p>(6) Authorization to approve and execute chemical contract Renewals including changes to the unit price, increases or decreases to the estimated annual / or specified term amount. Increases that cause the contract amount to exceed the General Manager's delegated authority shall be</p>

	approved by the Standing Committee and/or Board of Directors.
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**Section 7.02. Contingency Release**

The General Manager/Assistant General Manager shall manage the release of all contingency funds for use in all amendments and change orders within the approved contingency amounts.

**Section 7.03. Task Orders**

The Board of Directors hereby delegates the authority to award Task Orders within specified limits as follows:

<b>Delegated Authority</b>	<b>Authorized Action</b>
General Manager/ Assistant General Manager	<p>(1) For Task Orders covered under Article 2. Goods and Services, authorization to approve and execute Task Orders and/or Amendments to the Task Orders provided the cumulative total of the Task Order and Amendments thereto does not exceed \$300,000, upon the recommendation of the Department Director</p> <p>(2) For Task Orders covered under Article 2. Goods and Services, all new Task Order procurements between \$50,000 and \$300,000 are to be reported to the Board of Directors on a quarterly basis, in arrears.</p> <p>(3) For Task Orders covered under Article 3. Professional Services of this Ordinance, authorization to approve and execute Task Orders and/or Amendments to the Task Orders provided the cumulative total of the Task Order and Amendments thereto does not exceed \$100,000, upon the recommendation of the Department Director.</p> <p>(4) For Task Orders covered under Article 4. Professional Design Services, authorization to</p>



	<p>approve and execute Task Orders and/or Amendments to the Task Orders provided the cumulative total of the Task Order and Amendments thereto does not exceed \$300,000, upon the recommendation of the Department Director.</p> <p>(5) For Task Orders covered solely under Article 4, Professional Design Services of this Ordinance, the General Manager may delegate authorization to approve and execute Professional Design Service <del>m</del>Master <del>c</del>Contract Task Orders up to or equal to \$100,000, which is inclusive of amendments to Task Orders, to the Director of Engineering. This authorization may not be sub delegated further. This authorization does not apply to <del>m</del>Master <del>c</del>Contracts covered under Article 2 or Article 3 of this Ordinance.</p>
Standing Committees	<p>(1) For Task Orders covered under Article 3. Professional Services of this Ordinance, authorization to approve Amendments to the Task Orders where the cumulative value exceeds \$100,000 provided the cumulative total of the Task Order and Amendments does not exceed \$200,000, upon the recommendation of the General Manager/Assistant General Manager.</p>
Board of Directors	<p>(1) For Task Orders covered under Article 2. Goods and Services, all Task Orders and/or amendments where the cumulative value exceeds \$300,000 shall be approved by the Board of Directors.</p> <p>(2) For Task Orders covered under Article 3. Professional Services, all Task Orders and/or amendments that exceed \$200,000 shall be approved by the Board of Directors.</p> <p>(3) For Task Orders covered under Article 4. Professional Design Services, all Task Orders and/or Amendments that exceed \$300,000 shall be approved by the Board of Directors.</p>

**ARTICLE 8. ETHICS**

**Section 8.01. Unlawful Consideration Prohibited**

Sanitation District Officials shall neither solicit nor receive bribes, rebates, kickbacks, and/or any other unlawful consideration from any contracting party, or any party seeking a Contract with the Sanitation District, in exchange for favorable treatment or any other action.

## **Section 8.02. Conflicts of Interest**

### **A. Compliance with the Political Reform Act.**

Sanitation District Officials shall not make any Contracts, participate in the making of any Contracts, or in any way attempt to use their official positions to influence any decision on any Contracts, in violation of Government Code Sections 87100 *et seq.*

### **B. Compliance with Government Code § 1090.**

Without limiting the requirements of Part A above, no Sanitation District Official shall make any Contract, participate in the making of any Contract, or in any way attempt to use his or her official position to influence any decision on a Contract, in violation of California Government Code Section 1090.

### **C. Requirements Applicable to Consultants.**

Consultants designated by the Sanitation District's Conflict of Interest Code shall comply in all respects with Government Code Section 87100 *et seq.*, and its implementing regulations.

## **ARTICLE 9. DEFINITIONS**

Amendment means a properly executed written agreement entered into and between the Sanitation District and the Contractor, or issued by the Sanitation District, covering modifications to the original Contract and which may result in adjustments to provisions of the Contract, including, but not limited to, terms, scope of work, compensation, and/or period of performance.

Assignment means to revise Contracts and related records to reflect changes such as the sale, transfer, or reorganization of a Contractor's business, or a change in the Contractor's name for doing business, as long as all other terms and conditions of the original Contract remain the same.

Award Protest Statement shall mean a written objection to the award recommendation prior to final action to award the contract, which shall be submitted after receipt of sealed bids/proposals, but before award of a contract, as specified herein.

Best value means the overall combination of quality, price, and other elements of a proposal/bid (or combination of several proposals/bids) that, when considered together, provide the greatest overall benefit in response to the requirements described in the solicitation documents.

Change Order means a properly executed written agreement entered into and between the Sanitation District and the Contractor, or unilaterally issued by the Sanitation District, covering modifications to the original Contract, and which may result in adjustments to the provisions of the Contract, including, but not limited to, terms, scope of work, cost and/or period of performance.

Competitive Sealed Bids means a selection process whereby prospective Contractors submit sealed bids and the Contract is awarded to the lowest Responsive and Responsible Bidder.

Competitive Sealed Proposals means a selection process whereby prospective Contractors submit sealed proposals and the Contract is awarded to the proposal that best meets the criteria specified in the Request for Proposals.

Contingency means an amount above the original Contract price, as awarded by the delegated authority, established at the time of Contract award, as may be amended thereafter, to be used for Contract changes.

Contract means any type of agreement for the purchase of Goods, Services, and/or Public Works Projects. Contracts may be labeled in various different ways, including, but not limited to, "contract," "agreement," "purchase order," and "task order."

Contractor means any person or entity that has a Contract with the Sanitation District.

Department means one of the Sanitation District's designated departments.

Design-Bid-Build means a selection process for the award of Public Works Contracts involving three basic steps: (1) the Sanitation District hires a design professional to prepare detailed plans and specifications or the Sanitation District prepares detailed plans and specifications; (2) the Sanitation District solicits bids from construction firms based on the detailed plans and specifications; and (3) the Sanitation District awards the Contract to the lowest Responsive and Responsible Bidder.

Design-Build means a selection process for the award of Public Works Contracts involving two basic steps: (1) the agency solicits proposals from pre-qualified firms to design and construct a project; and (2) depending on the award criteria set forth in the Request for Proposals, the agency awards the Contract to either (a) the lowest Responsive and Responsible Bidder, or (b) the proposal that presents the "best value."

Designee means a person selected or authorized to temporarily manage the duty or role of another employee.

Director means a director of one of the Sanitation District's designated departments, or his or her designee(s).

Director of Engineering means the Sanitation District's Director of Engineering or his or her designee(s).

~~District means the Orange County Sanitation District.~~

~~District Board or Board means the Board of Directors of the Orange County Sanitation District.~~

~~District Official means any member of the District's Board of Directors, any District employee, and any District consultant that is designated under the District's Conflict of Interest Code.~~

General Manager means the General Manager of the Sanitation District, or his or her designee(s).

Goods means fixed, movable, disposable, and/or reusable products, commodities, equipment, materials, supplies or items used by the Sanitation District, and excludes land or any interest in real property.

Interested Party shall mean: (1) on solicitation, all bidders or proposers, and prospective bidders or proposers; (2) on award, the unsuccessful bidder or proposer with a direct economic interest in the outcome of their protest.

Local Business shall mean a business that has a principal business office, or a satellite office with at least one full-time employee, that is located within the Sanitation District service area.

Local Preference shall mean a preference for a Local Business over a business that is not a Local Business.

Mailing means transmission by United States Postal Service, electronic mail, or facsimile.

Negotiated Procurement means a selection process whereby the Purchasing Manager identifies one or more prospective Contractors of his or her choice, negotiates with one or more of them, and awards the Contract to one of them based on the best interest of the Sanitation District.

Notice Inviting Bids/Invitation for Bids means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, construction services, or professional services, including professional design services. It also includes all functions that pertain to the obtaining of any goods, services, or construction, including description of requirements, election and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional Services means (i) services provided by professionals that involve specialized judgment, skill, and expertise, and (ii) incidental services that professionals, and those in their employ, may logically or justifiably perform. Professional Services include, but are not limited to, services provided by accounting, financial, information technology, human resources consultation and advocacy, legislative advocacy, and scientific research/consulting firms.

Professional Design Services means architectural, landscape architectural, engineering, environmental, land surveying, construction project management, planning and other miscellaneous engineering related services retained by the Sanitation District in connection with, but not limited to, construction, alteration, and/or repair projects.

Public Works/Public Works Project means a project involving the construction, erection, or alteration of any type of structure, building, or improvement other than sewerage maintenance or repair projects.

Purchasing Manager means the Sanitation District's Contracts, Purchasing and Materials Management Manager, or his or her designee(s). Purchasing Manager designee means an employee residing under Contracts, Purchasing and Materials Management Division whose job duties include contracting and procurement execution and administration.

Renewal means a mechanism within an approved contract to provide the same goods/services for an additional period of time, at the specified price under the same terms and conditions. The number of renewals, the price, and any contingencies are approved at the time of award. Renewals may or may not increase the contract price. The contract price per term does not accumulate for purposes of approval thresholds. A Renewal may be exercised fewer times or for a shorter duration than the approved number or term, but any remaining time cannot be transferred to an additional renewal. Renewals cannot be added nor entered into for longer than the approved number or term at the time of award.

Request for Proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for Qualifications means a request for detailed information concerning the qualifications of prospective Contractors.

Requisition means an approved written document making a request for Goods and Services in advance of initiating a procurement process as well as a later request to amend, change, renew, cancel or extend time to a non-public works contract.

Responsible Bidder means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the requested services or project.

Responsive Bidder/Proposer means a bidder/proposer who has submitted a bid/proposal which conforms in all material respects to the Notice Inviting Bids/Invitation for Bids/Request for Proposals.

Sanitation District means the Orange County Sanitation District.

Sanitation District Board or Board means the Board of Directors of the Orange County Sanitation District.

Sanitation District Official means any member of the Sanitation District's Board of Directors, any Sanitation District employee, and any Sanitation District consultant that is designated under the Sanitation District's Conflict of Interest Code.

Services means the furnishing of materials, labor, time, or effort by a Contractor. Services include both general services janitorial, landscape, repair, maintenance, etc.) professional services, and professional design services, unless otherwise specified.

Sealed (Bids or Proposals) means the submittal of bids or proposals, either in paper or electronic format, whereby the bid or proposal documents are opened at a specific time and not before.

Sole Source Procurement means the acquisition of Goods and/or Services from a single source.

Solicitation Protest Statement shall mean a written objection during the solicitation phase of the procurement, which shall be submitted prior to the bid/proposal due date as specified herein.

Standing Committee means one of the permanent committees designated by the Board of Directors as "Standing Committees."

Task Order means a written document pursuant to a Contract issued by the Purchasing Manager which provides for the issuance of orders, containing a defined budget, scope of services, and schedule, and authorizes a Contractor to incur a specified amount for the performance of tasks.

Time Extension means an increase to the period of performance specified by the original contract only, as may be amended.

## **ARTICLE 10. MISCELLANEOUS**

### **Section 10.01. Noncompliance**

Any Contract entered into which fails in any respect to comply with the provisions of this Ordinance may be voided by the Board of Directors in its sole and absolute discretion. Any employee who willfully and knowingly violates any provision of this Ordinance may be subject to disciplinary action.

**Section 10.02. Effective Date**

This Ordinance No. OC~~SD-52~~ SAN-XX shall take effect June ~~26~~<sup>3</sup>, 20~~21~~<sup>18</sup>, upon adoption by the Board of Directors.

**Section 10.03. Repeal of Ordinance No. OCSD-~~5247~~**

Ordinance No. OCSD-~~5247~~, entitled "An Ordinance of the Board of Directors of the Orange County Sanitation District Establishing Requirements and Procedures for the Purchase of Goods, Services, and Public Works Projects; and repealing Ordinance No. OCSD-47" is hereby repealed in its entirety.

**Section 10.04. Certification and Publication.**

The Clerk of the Board shall certify to the adoption of this Ordinance, and shall cause a summary to be published in a newspaper of general circulation within 15 days as required by law.

PASSED AND ADOPTED by a majority of the Board of Directors of the Orange County Sanitation District at a Regular Meeting held on May ~~26~~<sup>23</sup>, 20~~21~~<sup>18</sup>.

~~Gregory C. Sebourn, PLS~~David John Shawver  
Chairman of the Board of Directors

ATTEST:

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Kelly A. Lore, MMC  
Clerk of the Board

APPROVED AS TO FORM:

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Bradley R. Hogin  
General Counsel



STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF ORANGE )

I, Kelly A. Lore, Clerk of the Board of Directors of Orange County Sanitation District, do hereby certify that the above and foregoing Ordinance No. OC ~~SAN-XXSD-52~~ was introduced for first reading at a regular meeting of said Board on the ~~28~~<sup>5</sup>th day of April 20~~21~~<sup>18</sup>, and passed and adopted at a regular meeting of said Board on the ~~26~~<sup>3</sup>rd day of May 20~~21~~<sup>18</sup>, by the following vote, to wit:

**AYES:** ~~Barnes; Bernstein; Berry (Alternate); Collacott; Deaton; Ferryman; B. Jones (Alternate); Kim; R. Murphy; Nagel; Nguyen; Parker; Peotter; Sebourn; Shaw; Shawver; F. Smith; T. Smith; Steel; Tinajero; Wagner; Wanke; and Withers~~

**NOES:** ~~None~~

**ABSTENTIONS:** ~~None~~

**ABSENT:** ~~S. Jones and Peterson~~

IN WITNESS WHEREOF, I have hereunto set my hand this ~~28~~<sup>3</sup>rd day of May 20~~21~~<sup>18</sup>.

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Kelly A. Lore, MMC  
Clerk of the Board  
Orange County Sanitation District