

Section

3

CHAPTER 3 PURCHASING GUIDELINES

3.1 PURCHASING IN GENERAL

1. **INTENT:** These Guidelines are intended:

- a) To implement the East County Water Control District's (the "District") discretionary authority to adopt resolutions that may be necessary for the conduct of its business and the exercise of its general powers.
- b) To better assure the timely, efficient, effective, responsive, and economical management of District resources;
- c) To provide guidance to residents, the public-at-large, Commissioners, staff, consultants, and present and potential bidders and contractors regarding District's typical purchasing policies and procedures.
- d) To be applied flexibly and reasonably to accomplish the District's goals. They may be amended from time to time in the manner provided herein and as permitted by law to achieve their stated purpose as the situation may require.

2. **PURCHASING GUIDELINES ESTABLISHED.**

In order to comply with Sections 287.017 and 287.055, Florida Statutes, the following Guidelines are established for the purchase by the District of professional services, contract services, and commodities. All references herein to "Guidelines" shall refer only to the **Purchasing Guidelines in this Chapter 3**, unless a different meaning is otherwise clearly indicated.

3. **AMENDMENT OF GUIDELINES**

- a) Unless otherwise expressly stated herein, these Guidelines may be amended by the Board by resolution adopted at any regular meeting.

4. **CONFLICT OF LAWS**

In the event of conflict between the provisions of these Guidelines and the provisions of Chapter 2000-423, Laws of Florida, Chapter 298, Florida Statutes or any other provision of general law (the "Act") the Act shall supersede and take precedence over these Guidelines.

5. DEFINITIONS

- a) Definitions located within any Part or section of these Guidelines shall be applicable within all other Parts or sections, unless expressly stated to the contrary.
 - i) The definitions found in Florida Statutes shall apply to these Guidelines:
 - ii) **“DISTRICT”** shall mean the East County Water Control District, Lee and Hendry County, Florida
 - iii) **“EMERGENCY PURCHASE(S)”** shall mean purchases necessitated by a sudden unexpected turn of events (e.g. acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Board in the normal conduct of its business), where the Board finds that the delay incident to competitive bidding would be detrimental to the interests of the District.
 - iv) **“INVITATION TO BID”** shall mean a formal, written solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically and defining the Commodity involved. It includes printed instructions prescribing conditions for bidding, evaluation criteria, and provides for a manual signature of an authorized representative. Any conditions for bidding shall be included. The invitation to bid shall be available to all prospective offerors at the same time.
 - v) **“NOTICE OF DECISION”** shall mean a notice from the District of its decision or intended decision on a bid invitation or request for proposal sent to vendors who have submitted bids or responses to proposals.
 - vi) **“PURCHASE”** shall mean an acquisition by contracting in any manner, whether by sale, rent, lease, lease/purchase or installment sales contract which may provide for the payment of interest on unpaid portions of the purchase price, or outright purchase, from a source of supply for Commodities or contract services. The following are not Purchases”;
 - (1) Transfer, sale or exchange of Commodities between federal, state, regional or local governmental agencies; and
 - (a) (2). Acquisition of services from regulated utilities or public communications media.
 - vii) **“REQUEST FOR PROPOSAL”** (“RFP”) is a written solicitation by the District for sealed proposals with the title, date and hour of the public opening designated and requiring the manual signature of an authorized representative. In the case of contract services, it provides a statement of services sought, applicable terms and conditions, and evaluation criteria, including, but not limited to, price. It may provide general information, applicable laws and guidelines, statement of work, functional or general specifications, proposal instructions, work detail analysis and evaluation criteria, as necessary.

- viii) **“RESPONSIVE BIDDER/OFFEROR”** shall mean a person or firm that has submitted a bid/proposal that conforms in all material respects to the Invitation to Bid or Request for Proposal.
- ix) **“RESPONSIBLE”** or **“QUALIFIED BIDDER/OFFEROR”** means a person or firm with the capability to perform in all respects the contract requirements and the integrity and reliability to assure good faith performance. Failure to provide information to determine responsibility in response to a condition of a bid/proposal requiring information is cause for such bid/proposal to be rejected.
- x) **“RESPONSIVE BID/PROPOSAL”** shall mean a bid or proposal that conforms in all material respects to the specifications and conditions in the invitation to bid or request for proposal and these Guidelines, and the cost components of which are appropriately balanced. A bid/proposal is not responsive if the person or firm submitting the bid fails to meet any requirement relating to the qualifications, financial stability, or licensing of the bidder. The responsiveness of the bid or proposal and the qualifications or responsibility of the bidder or offer or will be determined as of the time the bids/proposals are made public.
- xi) **“LOWEST RESPONSIBLE BID/PROPOSAL”** shall mean, in the sole discretion of the Board, the bid or proposal that is: (i) submitted by a responsible or qualified bidder/offeror; (ii) responsive to the invitation to bid or request for proposal as determined by the Board, and (iii) the lowest cost to the District. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids may not be modified after opening.
- xii) **“SINGLE”** or **“SOLE SOURCE PURCHASES”** shall mean the Purchase of a Commodity or contractual service that is available from only one source.

1. IN GENERAL

- a) Unless otherwise provided in these Guidelines, the following general standards and policies shall apply to all Purchases.

2. PURCHASES LESS THAN CATEGORY ONE

- a) Purchases of less than CATEGORY ONE (as defined in Section 287.017, Florida Statutes) may be made by an Invitation to Bid/Request for Proposal whenever the District determines it is in the best interest of the District to do so.

3. NO DIVISION OF PURCHASES

- a) No Purchase shall be divided in order to circumvent the competitive bid/proposal requirements of these Guidelines.

4. REQUESTS FOR PROPOSALS.

- a) When the District determines that the use of the approved provider's list (see also Guideline 3.22.5) is not practicable, contractual services shall be procured by competitive sealed proposals.
- b) A Request for Proposals (RFP) shall include a statement of the services sought and all contractual terms, conditions applicable to the procurement of the contractual service, the criteria which shall include but not be limited to, price to be used in determining acceptability of the proposal.
- c) An RFP shall be published at least twenty-eight (28) days prior to the date set for submittal of proposals.
- d) In the event the District contemplates renewal of the contract, the Request for Proposal shall so state and shall also provide sufficient information, including the contract period(s) of renewal, to enable each bidder to bid on the contract, including renewal(s), and in such case contract awards shall be made based upon an evaluation of proposals for the entire contract period, including renewal(s).
- e) To assure full understanding and responsiveness to the solicitation requirements, discussions may be conducted by qualified offerors. Offerors will be accorded fair and equal treatment prior to the submittal date specified in the request for proposals with respect to any opportunity for discussion and revision proposals.

- f) A Request for Proposals may provide for discussions to be conducted by the District before proposals have been opened to allow clarification and changes, provided that adequate precautions are taken to treat each offeror fairly and insure that information gleaned from competing proposals are not disclosed among offerors.

5. REQUESTS FOR QUALIFICATIONS; APPROVED PROVIDERS LIST

- a) Qualified providers may be requested by the District to submit an application to be included on the approved provider's list after the date for submitting bids.
 - i) Any qualified provider submitting a late bid will be added at the end of the approved providers list if the firm executes a statement stating it is willing to provide the service at the established base rate. A defaulting contractor may be removed from the approved provider's list in the discretion of the District. (See also **Guideline 3.8.3 (Pre-Qualification.)**)

6. RECEIPT AND OPENING OF BIDS AND PROPOSALS

- a) It is the bidder's/ proposer's responsibility to assure that the bid/proposal is delivered at the proper time and place of the bid opening. Bids/proposals which for any reason are not so delivered will not be considered, however, bids/proposals in the care, custody and control of the District at the time of the public opening will be opened and evaluated for award. Offers by any telecommunications means are not acceptable.
 - i) Upon receipt by the District, bids/proposals shall be maintained unopened in a secure location until the opening time and date.
 - ii) Bid/proposal opening shall be public at the date, time and at the place specified in the solicitation. The official timepiece shall be the employee time clock. The opening shall be conducted by an employee of the District and witnessed by the Treasurer or a Commissioner of the District.
 - iii) The District shall audiotape the bid opening.
 - iv) Bid/proposal tabulation sheets should be completed simultaneously with the public reading of the prices received whenever appropriate. Upon completion of the tabulation, a copy will be made accessible for inspection by any interested party.
 - v) All present at the opening shall be advised that the reading of the prices received does not imply or constitute an award.
 - vi) The contract shall be awarded by purchase order or other written notice to the responsive and responsible bidder with the lowest and best price for the Commodities or contract services or the lowest or best proposal.
 - vii) After bids/proposals have been opened, the documents are to remain under the supervision of an employee of the District while being examined by any interested party.

7. AWARD

- a) The award shall be made to the responsive and responsible bidder or offeror whose bid or proposal is determined in writing to be the most advantageous to the District, taking into consideration such factors as: price; the firm's training and ability; past experience and present capabilities; personnel; location relative to the District; and such other criteria as may be set forth in the Invitation to Bid/Request for Proposals.

8. RECEIPT OF ONE BID OR NO BID

- a) In the event one bid or no bids or proposals are received in response to a bid solicitation or a RFP, the District may negotiate the best terms and conditions available for acquisition of required commodities.

9. THE BIDS

- a) If two or more responses to an invitation to bid or request for proposal are equal with respect to price, quality and service, the bid shall be awarded by random drawing.

10. REQUEST TO WITHDRAW BID/PROPOSAL

- a) Requests for withdrawal may be considered if received by the District, in writing, within seventy-two (72) hours after the bid/proposal opening time and date. Requests received in accordance with this provision may be granted by the District upon proof of the impossibility to perform based upon an obvious error.

11. CORRECTION OF BIDS/PROPOSALS

- a) Bidders/Offerors may request the opportunity to correct errors in bids up to the time bids are opened. Mathematical errors are the responsibility of the Bidder/Offeror. However, obvious errors may be corrected by the District.

12. SOLE SOURCE PURCHASES

- a) Purchase of contractual services and of Commodities in excess of CATEGORY ONE may be exempted from competitive procurement procedures with prior approval of the Board. The Board shall submit a certification stating the conditions and circumstances meeting the provisions of Section 287.057(5) (a) & (c), Florida Statutes. A copy of the certification shall be included in the contract file.

13. NOTICES OF DECISION; ESTABLISHMENT OF CONTRACTS

- a) A notice of decision or intended decision shall be sent to vendors or offerors who have submitted bids or proposals by United States Mail or by hand delivery. All notices of decision or intended decisions shall contain the statement: "Failure to file a notice of protest in writing within seventy-two (72) hours after receipt of the notice of the District's decision and failure to file a formal written protest within 10 days after filing a notice of protest shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."
- b) Provided no notice of protest and formal protest is received within the times specified by Guidelines **3.11, 3.12, 3.13, or 3.14**, issuance of a written notice of the District's decision on an Invitation to Bid or Request for Proposal shall establish a contract between the District and the supplier of Commodities upon the terms, conditions and prices specified in the Invitation to Bid/Request for Proposal and the bidder's bid response/proposal. In the event of a protest, a contract shall be established upon final disposition of such protest.
- c) Execution of a contract representing final agreement for services shall establish a contract between the District and the contractor for contractual services not acquired under the provision of **Guideline 3.2.13**, above.

14. CONTRACT TERMS

- a) Following Notice of Award, a contract shall be executed between the District and the vendor prior to the delivery of the Commodity or contract service, except in the case of an **Emergency Purchase (see Guideline 3.2.17)**.
- b) At a minimum, the contract shall include:
- c) A scope of Services:
 - i) A description of deliverables;
 - ii) A payment schedule;
 - iii) A period of contract specifying the criteria and final date of completion of the contract;
 - iv) A termination provision for non-performance;
 - v) Where applicable, a provision for contract renewal or extension;
 - vi) The naming of the District as an additional insured;
 - vii) Initial areas on the bottom right of every page of the contract.

15. THE CONTRACT FILE

- a) The contract file shall include all pertinent information relating to the contract during the preparatory stages, including:
 - i) Documentation supporting the decision to contract;
 - ii) A copy of the invitation for bid or request for proposals;
 - iii) Documentation relating to the bid process;
 - iv) Opening of bids/proposals;
 - v) Evaluation and tabulation of bids;
 - vi) Determination and notice of award of contract;
 - vii) Addendum to the bid;
 - viii) The bids of all bidders;
 - ix) Literature and price lists submitted with the bid;
 - x) A copy of the legal ad for bids or proposals;
 - xi) Copies of requisitions;
 - xii) A copy of the purchase order or contract;
 - xiii) Evaluation work sheets.

16. RIGHT OF REJECTION BIDS/PROPOSALS

- a) The District shall have the right to reject any or all bids or proposals and such reservation shall be included in all solicitations and advertisements.

17. EMERGENCY PURCHASES

- a) The District Manager shall file a statement in the contract file certifying the conditions and circumstances requiring an Emergency Purchase.
- b) The District Manager shall file a statement in the Contract File detailing the emergency conditions and circumstances within thirty (30) days after the date of the purchase order or contract and shall include complete details surrounding the events which created the emergency as defined in Chapter 287.057(5) (a), Florida Statutes. A copy of the purchase order or contract shall accompany the statements.

18. EXTENSIONS OF EXISTING CONTRACTS

- a) Extension of existing contracts may be made pursuant to the contract terms specifically providing for such an extension. Extension shall be made in writing. If the contract does not provide for extensions, extensions may be made by the Board for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial contract. A contract shall not be extended more than once unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the contractor's control. However, any contract in existence prior to the effective date of this Guideline may be extended according to the terms and conditions of the contract.

19. CONTRACT DEFAULT

- a) Suppliers who fail to perform to contract terms and conditions shall be notified, in writing, stating the nature of the failure to perform and providing a time certain for correcting the failure (reasonable time should not generally be less than ten (10) days after receipt of such notice). The notification will also provide that, should it fail to perform within the time provided, or unless the District determines on its own investigation that the supplier's failure is legally excusable, the supplier shall be found in default and issued a second notice stating the reasons the supplier or contractor is considered in default and stating that the District has re-procured the Commodities or contract services and the amount of the re-procurement
- b) The defaulting supplier or contractor will also be advised his firm will not be eligible for award of a contract by the District until such time as the District is reimbursed for all re-procurement costs. The defaulting supplier shall reimburse the District for all re-procurement costs and for costs of cover; that is, the difference between the cost of the substitute commodities and the contract price for such Commodities or contract services. Re-procurement of substitute commodities may be accomplished by first attempting to contract with the second lowest bidder under the Invitation to Bid or the offeror of the second best proposal under the Request for Proposal.
- c) If the District fails to contract with the second lowest bidder or the offeror of the second best proposal, it may attempt to contract with the next lowest bidder or offeror of the next best proposal sequentially, until a bidder willing to perform at an acceptable price under the bid/proposal conditions is found. The District may elect to re-bid or to purchase on the open market, as may be in the best interest of the District. Until such time as it reimburses the District for all re-procurement and cover costs, the defaulting supplier shall not be eligible for award of a contract by the District. All correspondence to supplier respecting failure to perform shall be sent "Certified, Return Receipt Requested".

1. PURPOSE AND SCOPE:

- a) All purchases of Commodities exceeding the amount provided in Section 287.017, Florida Statutes, for **CATEGORY ONE** (see Exhibit “A” pg 95), as such category may be amended from time to time, shall to the maximum extent practicable be purchased according to the terms of these **Guidelines, 3.3**

2. DEFINITIONS:

- a) **“COMMODITY”** shall mean:
 - i) Supplies, materials, goods, merchandise, equipment and other personal property purchased, leased, or otherwise contracted for by the District. Commodities do not include acquisition of printing, insurance, advertising or legal notices. A contract for the acquisition of both services and commodities shall be a contract for commodities unless the District determines the majority of the contract amount is for contractual services and should be processed according to **Policy 3.4, 3.5 or 3.6** of these Guidelines.
- b) **“USED COMMODITY”** shall mean:
 - i) Commodities that are offered to the District for acquisition by either: the owner of the Commodity who is not engaged in the business of selling the same or similar Commodities and has used the Commodity for its intended purpose for a period of time;
 - ii) Or the owner of the Commodity who is an individual or company engaged in the business of selling Used Commodities previously owned and used for their intended purpose for a period of time.

3. PROCEDURE:

- a) When a purchase of Commodities is within the scope of this Purchasing Guideline, the following is appropriate:
- b) The Board shall cause to be prepare an Invitation to Bid or Request for Proposal, as appropriate. When the District determines in writing that the use of competitive sealed bidding is not practicable, Commodities shall be procured by competitive sealed proposals.
- c) An Invitation to Bid or a Request for Proposals shall include:
 - i) A detailed description of the Commodity sought;
 - ii) The date for submittal of bids;
 - iii) All contractual terms and conditions applicable to the procurement of Commodities;
 - iv) The criteria, which shall include, but not be limited to, price, to be used in determining acceptability of the bids or proposals.

- v) In the event the District contemplates a renewal of the contract, a statement to that effect and sufficient information, including the contract period(s) of renewal, to enable each bidder or proposer to bid on the contract including renewal. In such case, the contract award shall be made based upon an evaluation of bids or proposals for the entire contract period, including renewal.
- d) The Notice of Invitation to Bid or Request for Proposal shall be advertised at least once in a newspaper of general circulation within the District. The notice shall allow at least ten (10) days for submittal of bids and at least twenty-eight (28) days prior to the date set for submittal of proposals, unless the Board, for good cause, determines a shorter period of time is appropriate. Public notice may be waived if the head of the agency determines that an emergency exists and precedes pursuant to **Guideline 3.2.17** and Chapter 287.057(5) (a), Florida Statutes.
- e) The District may maintain lists of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who provide their name and address to the District Manager for inclusion on the list shall receive notices by mail.
- f) To assure full understanding of and responsiveness to the solicitation requirements, discussions may be conducted with qualified bidders and offerors. Bidders and offerors will be accorded fair and equal treatment prior to the submittal date specified in the Invitation to Bid or Request for Proposals with respect to any opportunity for discussion and revision of bids or proposals. Request for Proposals may provide for discussions to be conducted by the District before proposals have been opened to allow clarification and changes, provided that adequate precautions are taken to treat each fairly and insure that information gleaned from competing proposals are not disclosed among the offerors.
- g) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible or qualified bidder who bids the lowest and best price or to the Offeror whose proposal is determined in writing to be most advantageous to the District taking into consideration price and the other criteria set forth in the Request for Proposals. Bids or proposals shall be opened at the time and place noted on the Invitation to Bid or Request for Proposal. Bids and proposals shall be evaluated in accordance with the invitation or request and these Guidelines. The contract file shall contain the basis on which the award is made.
- h) The Lowest Responsive and Responsible Bid or Proposal shall be accepted; however, the Board shall have the right to reject all bids, either because they are too high or because the Board determines it is in the best interests of the District. In the event the bids exceed the amount of funds available to or allocated by the District for this purchase, the bids may be rejected. The Board may require bidders to furnish performance and/or other bonds with a responsible surety to be approved by the Board.
- i) Notice of award or intent to award, including rejection of some or all bids, shall be provided in writing to all bidders by United States Mail, by hand delivery, or by overnight delivery service.
- j) If only one response to an Invitation to Bid or Request for Proposal is received, the District may proceed with the procurement of Commodities. If no response to an Invitation to Bid or Request for Proposal is received, the District may take whatever steps reasonably necessary in order to proceed with the procurement of Commodities.

- k) The District may make an Emergency Purchase without complying with these Guidelines. The fact that an Emergency Purchase has occurred or is necessary shall be noted in the Minutes of the next Board Meeting.

4. USED COMMODITIES

- a) In the event the Board seeks to acquire a Commodity for the District, and determines that such a Commodity is more readily and economically available in used condition, then the Board, in its discretion, may approve the purchase of a Used Commodity without the need for competitive bidding, provided that:
 - i) Price quotes are obtained and recorded from all local sources of the same or similar Commodity available in a used condition; and
 - ii) The District Manager has inspected, or otherwise satisfactorily determined the quality, condition, and specifications of all Used Commodities for which prices quotes are obtained.
- b) The Board shall select the used commodity to be purchased based upon the lowest priced Used Commodity which is in satisfactory condition, as determined by the Board upon recommendation of the District Manager.

1. SCOPE

- a) All contracts for maintenance of any District facility, project machinery or equipment or the provision of security services shall be let under the terms of these Guidelines if the cost exceeds the amount provided in Section 287.017, Florida Statutes, for **CATEGORY FOUR**, as such category may be amended from time to time. The maintenance of these facilities or projects may involve the purchase of contract services and/or Commodities, as defined herein. Where a contract for maintenance of such a facility or project includes Commodities and/or contract services, the District may in its sole discretion, award the contract according to the Guidelines in this subsection in lieu of separately bidding for maintenance, Commodities, and contract services. However, a project shall not be divided solely in order to avoid the threshold bidding requirements.

2. PROCEDURE

- a) Notice of Invitation to Bid or Request for Proposal shall be advertised at least once in a newspaper of general circulation within the District. The notice shall allow at least seven (7) days for submittal of bids, unless the Board, for good cause, determines a shorter period of time is appropriate.
- b) The notice shall include a detailed description of the services sought, the date for submittal of bids, any contractual terms and conditions applicable to the contractual service and the criteria used to evaluate contractors.
- c) The District may maintain lists of persons interested in receiving notices of Invitations to Bid or Requests for Proposals. Persons who provide their name and address to the District Office for inclusion on the list shall receive notices by mail.
- d) In order to be eligible to submit a bid or proposal, a firm or individual must, at the time of receipt of the bids or proposals:
 - (i) Hold the required applicable state professional licenses in good standing.
 - (ii) Hold all required applicable federal licenses in good standing, if any.
 - (iii) Hold current and active Florida Corporate Charter or be authorized to do business in Florida in accordance with Chapter 607, Florida Statutes, if the bidder is a corporation.
 - (iv) Meet any special pre-qualification requirements set forth in the bid proposal specifications.
- e) Evidence of compliance with these Guidelines may be submitted with the bid, if required by the District.

- f) Bids or Proposals shall be opened at the time, date, and place noted on the Invitation to Bid or Request for Proposal. Bids and Proposals shall be evaluated in accordance with the Invitation or Request and these Guidelines.
 - g) To assist in the determination of the lowest responsive and responsible bidder, the District Representative may invite public presentation by firms or individuals, regarding their qualifications, approach to the project, and ability to perform the contract in all respects.
 - h) In determining the lowest responsive and responsible bidder, the District Representative may consider, in addition to factors described in the Invitation to Bid or Request for Proposal, the following:
 - (i) The ability and adequacy of the professional personnel employed by each bidder or proposer.
 - (ii) The past performance of each bidder or proposer for the District and in other professional employment.
 - (iii) The willingness of each bidder or proposer to meet time and budget requirements.
 - (iv) The geographic location of each bidder or proposer's headquarters or office in relation to the project.
 - (v) The recent, current, and projected workloads of the bidder or proposer.
 - (vi) The volume of work previously awarded to each bidder or proposer.
 - (vii) Whether the cost components of each bid or proposal are appropriately balanced.
3. Whether a bidder or proposer is a certified minority business enterprise.
- a) The Lowest Responsive and Responsible Bid/Proposal shall be accepted; however, the Board shall have the right to reject all bids, either because they are too high or because the Board determines it is in the best interests of the District. The Board may require bidders to furnish performance and/or other bonds with a responsible surety to be approved by the Board. If the Board receives fewer than three (3) responses to an Invitation or Proposal, the Board, may, in its discretion, re-advertise for additional bids without rejecting any submitted bid. In the event the bids exceed the amount of funds available to or allocated by the District for this purchase, the bids may be rejected. Bidders not receiving a contract award shall not be entitled to recover costs of bid preparation or submittal from the District.
 - b) Notice of the award or intent to award, including rejection of some or all bids, shall be provided in writing to all bidders by United States Mail, or by hand delivery, or by overnight delivery service.

1. APPOINTMENT OF DISTRICT ATTORNEY

- a) Pursuant to the provisions of Section 298.18, Florida Statutes, the Board shall employ an attorney to act for the District and to advise the Board. The District Attorney shall conduct all legal proceedings and suits in court where the District is a party or interested and shall, in all legal matters, advise the Board, its officers, employees or agents, and generally look after and attend to all matters of a legal nature for the District. When the Board deems it necessary, it may, by and with the advice of its Attorney, employ other and further Attorneys for special engagements.

2. APPOINTMENT OF CHIEF ENGINEER

- a) A Chief Engineer of the District shall be appointed in accordance with the requirements of Section 298.16, Florida Statutes. The Chief Engineer shall enter into a bond, with good surety, and shall perform his/her duties in accordance with the requirements of Chapter 298, Florida Statutes.

1. SCOPE:

All Purchases of contractual services may, but are not required to, be made by competitive Invitation to Bid. If state or federal law prescribes with whom the District must contract, or establishes the rate of payment, then these Guidelines shall not apply. A contract involving a combination of Commodities and contractual services may, in the discretion of the Board, be treated as a contract for Commodities.

2. DEFINITIONS:**a) “CONTRACTUAL SERVICES” means:**

Rendering time and effort rather than furnishing specific goods or commodities. The term applies only to those services rendered by the individuals and firms who are independent contractors. Such service may include, but are not limited to, evaluations, consultations, maintenance, accounting, security, management systems, management consulting, educational training programs, research and development studies or reports on the findings of consultants, and professional, technical and social services. Contractual services do not include: maintenance services; legal services (including attorneys, paralegals, court reporters and expert witnesses, including appraisers); artistic, auditing, health, or academic program services; professional architecture, engineering and land surveying services (as defined in Section 287.055(2)(a), Florida Statutes, and these Guidelines); or performance of services of District employees; and shall generally be considered the services referenced by Section 287.012(9), Florida Statutes. Contractual services do not include the extension of an existing contract for services if such extension is provided for in the contract terms.

b) “PROPOSAL MOST ADVANTAGEOUS TO THE DISTRICT” means:

As determined in the sole discretion of the Board, the proposal: (i) submitted by a person or firm capable and qualified in all respects to perform fully the contract requirements who has the integrity and reliability to assure good faith performance, (ii) the most responsive to the Request for Proposal as determined by the Board, and (iii) which is for a cost to the District deemed reasonable by the Board. Minor variations in the proposal may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Proposals may not be modified after opening. To assure full understanding of the responsiveness to the solicitation requirements, discussions may be conducted with qualified offerors. Offerors shall be accorded fair and equal treatment prior to the submittal date with respect to any opportunity for discussion and revision of proposals.

3. PROCEDURE

When a purchase of contractual services is within the scope of these Guidelines (and the District has elected to follow this procedure), the following procedure shall be followed:

- a) The Board shall cause to be prepared a notice of Invitation to Bid or Request for Proposal, as appropriate.
- b) Notice of Invitation to Bid or Request for Proposal shall be advertised at least once in a newspaper of general circulation in the District and posted in the District office. The notice shall allow at least seven (7) days following the date of publication for submittal of bids or proposals unless the Board, for good cause, determines a shorter period of time is appropriate, which shorter time period shall be specified in the advertisement of the invitation or request.
- c) The District may maintain a list of persons interested in receiving notices of invitations to bid or requests for proposals. The District shall make a good faith effort to provide written notice, by United States Mail, to persons who provide their name and address to the District office for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any contract awarded in accordance with these Guidelines and shall not be a basis for a protest of any contract award.
- d) Bids or proposals shall be opened at the time and place noted on the Invitation to Bid and Request for Proposal. Bids and proposals shall be evaluated in accordance with the invitation or request and these Guidelines.
- e) If only one (1) response to an Invitation to Bid or Request for Proposal is received, the District may proceed with the procurement for contractual services from such bidder or proposer. If no response to an Invitation to Bid or Request for Proposal is received, the District may take whatever steps are reasonably necessary in order to proceed with the procurement of the needed contractual services.
- f) The Board has the right to reject any or all bids or proposals. The reservation regarding the right to reject shall be included in all solicitations and advertisements. If the bids or proposals exceed the amount of funds available to or allocated by the District for this Purchase, the bids or proposals may be rejected. Bidders and proposers not receiving a contract award shall not be entitled to recover any costs of bid or proposal preparation or submittal from the District.
- g) The Lowest Responsive and Responsible Bid or Proposal or the most advantageous to the District, as appropriate, may be accepted by the District. The Board may require bidders to furnish bid, performance and/or other bonds with a responsible surety to be approved by the Board.

4. NOTICE

- a) Notice of contract award, including the rejection of some or all bids or proposals, shall be provided in writing to all bidders or proposers by United States Mail, overnight delivery, or by hand delivery.

5. CONTRACT RENEWAL

- a) Renewal of a contract for contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract, unless otherwise provided in the initial contract. Renewal shall be contingent upon satisfactory performance evaluations by the District.

6. EMERGENCY PURCHASE

- a) The District may make an emergency purchase of contractual services without complying with these Guidelines. The fact that an emergency purchase has occurred or is necessary shall be noted in the minutes of the next Board meeting.

7. CONTINUING CONTRACT(S).

- a) Nothing in these Guidelines shall prohibit a continuing contract between a firm or an individual and the District.

1. SCOPE:

- a) The District shall utilize the procedures established in Section 218.391, Florida Statutes, when selecting an auditor to conduct the annual financial audit required by Section 218.39, Florida Statutes.

2. SELECTION PROCEDURES:**a) Audit Committee.**

- (1) The Board of Commissioners shall establish an audit committee the primary purpose of which shall be to assist the Board of Commissioners in selecting an auditor to conduct the annual financial audit required by Section 318.39, Florida Statutes. The audit committee may serve such other audit oversight purposes as may be specifically determined by the Board of Commissioners. The public shall not be excluded from the proceedings of the audit committee.

b) The audit committee shall:

- i) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under Chapter 473, Florida Statutes, and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and such other factors as may be determined by the committee to be applicable to its particular requirements.
- ii) Publicly announce requests for proposals. Public announcements must include, at a minimum, a brief description of the audit and indicate how interested firms can apply for consideration.
- iii) Provide interested firms with a request for proposal. The request for proposal shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal.
- iv) Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to Guideline **3.7.2.B (1)**, it shall not be the sole or predominant factor used to evaluate proposals.
- v) Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to **Guideline 3.7.2.B (1)**. If fewer than three (3) firms respond to the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

- c) The Board of Commissioners shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the audit committee, and negotiate a contract, using one of the following methods:
 - i) If compensation is not one of the factors established pursuant to Guideline **3.7.2.B(1)** and not used to evaluate firms pursuant to **Guideline 3.7.2.B(4)**, the Board of Commissioners shall negotiate a contract with the firm ranked first. If the Board of Commissioners is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The Board of Commissioners, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.
 - ii) If compensation is one of the factors established pursuant to Purchasing Guideline **3.7.2.B(1)** and used in the evaluation of proposals pursuant to **Guideline 3.7.2.B(4)**, the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.
 - iii) The Board of Commissioners may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.
- d) In negotiations with firms under this Purchasing Guideline, the governing body may allow a designee to conduct negotiations on its behalf.
- e) The method used by the Board of Commissioners to select a firm recommended by the audit committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of Section 218.39, Florida Statutes and the needs of the Board of Commissioners.
- f) If the Board of Commissioners is unable to negotiate a satisfactory contract with any of the recommended firms, the audit committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.
- g) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this Part, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:
 - i) A provision specifying the services to be provided and fees or other compensation for such services.
 - ii) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

- iii) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.
- h) Written contracts entered into pursuant to **Guideline 3.7.2.G** may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this **Policy 3.7**. Renewal of a contract shall be in writing.

1. SCOPE

- a) All contracts for the construction or improvement of any building, structure or other public construction **works authorized by** the District, the costs of which are estimated by the District in accordance with generally accepted cost accounting principles to be in excess of the threshold amount for applicability of Section 255.20, Florida Statutes, as that amount may be indexed or amended from time to time, shall be let under the terms of these Guidelines and comply with the bidding procedures of Section 255.20, Florida Statutes, as the same may be amended from time to time (**See Exhibit “B”**). In the event of conflict between these Guidelines and Section 255.20, Florida Statutes, the later shall control.

2. PROCEDURE

- a) Notice of Invitation to Bid or Request for Proposal shall be advertised at least once in a newspaper of general circulation in the District. The notice shall allow at least twenty-one (21) days for submittal of sealed bids, unless the Board, for good cause, determines a shorter period of time is appropriate. Any project projected to cost more than \$500,000 must be noticed at least thirty (30) days prior to the date for submittal of bids.
- b) The District may maintain lists of persons interested in receiving notices of Invitation to Bid or Requests for Proposals. Persons who provide their name and address to the District Office for inclusion on the list shall receive notices by mail.
- c) To be eligible to submit a bid or proposal, a firm or individual must, at the time of receipt of its bid or proposal:
 - i) Hold all required applicable state professional licenses in good standing.
 - ii) Hold all required applicable federal licenses in good standing, if any.
 - iii) If the bidder is a corporation or other business enterprise, hold a current and active Florida Corporate Charter or otherwise be authorized to do business in Florida in accordance with Florida law.
- d) Meet any special pre-qualification requirements set forth in the bid/proposal specifications.
- e) Evidence of compliance with these Guidelines may be submitted with the bid or proposal, if required by the District.

- f) Bids or proposals shall be opened at the time, date and place noted on the Invitation to Bid or Request for Proposals. Bids or proposals shall be evaluated in accordance with the Invitation to Bid or Request for Proposal and these Guidelines.
- g) To assist in the determination of the lowest responsive and responsible bidder, the District Representative may invite public presentation by firms regarding their qualifications, approach to the project, and ability to perform the contract in all aspects.
- h) In determining the lowest responsive and responsible bidder, the District Representative may consider, in addition to factors described in the Invitation or request, the following:
 - i) The ability and adequacy of the professional personnel employed by each bidder or proposer.
 - ii) The past performance of each bidder or proposer for the District and in other professional employment settings.
 - iii) The willingness of each bidder or proposer to meet time and budget requirements.
 - iv) The geographic location of each bidder or proposer's headquarters or office in relation to the project.
 - v) The recent, current, and projected workloads of the bidder or proposer
 - vi) The volume of work previously awarded to each bidder or proposer.
 - vii) Whether the cost components of each bid or proposal are appropriately balanced.
Whether a bidder or proposer is a certified minority business enterprise.
- i) The Lowest Responsive and Responsible Bid/Proposal shall be accepted; however, the Board shall have the right to reject all bids, either because they are too high or because the Board determines it is in the best interests of the District. The Board may require bidders to furnish performance and/or other bonds with a responsible surety to be approved by the Board. If the Board receives fewer than three (3) responses to an Invitation or Proposal, the Board, may, in its discretion, re-advertise for additional bids without rejecting any submitted bid. In the event the bids exceed the amount of funds available to or allocated by the District for this purchase, the bids may be rejected. Bidders not receiving a contract award shall not be entitled to recover costs of bid preparation or submittal from the District.
- j) Notice of the award or intent to award, including rejection of some or all bids, shall be provided in writing to all bidders by United States Mail, or by hand delivery, or by overnight delivery service.
- k) The standard contract documents included as **Attachment "H"** to these administrative policy and procedures shall be utilized on District Capital Projects.

3. PRE-QUALIFICATION

- a) The District has established a pre-qualification process for civil engineering services in accordance with Section 287.055, Florida Statutes. Engineering firms that have been pre-qualified will remain so for a period of three (3) years. Following such certification, when a project is contemplated that exceeds Consultants Competitive Negotiation Act (“CCNA”) thresholds (Section 287.017, Florida Statutes), the District Manager will enter into contract negotiations with a pre-qualified firm based on the nature of the work using the criteria established in **Guideline 3.8.2**. If an agreement as to price and terms is reached as a result of initial negotiations, the Manager will recommend to the Board of Commissioners that that firm be selected to do the work. If the negotiations do not produce agreement, the Manager will commence negotiations with the next acceptable pre-qualified firm that, in his judgment, satisfy the requirements of the job.
 - i) While the District Manager will endeavor to establish an equitable distribution of District work to pre-qualified firms, the District reserves the absolute right to select the firm that is best qualified and prepared to do the work. **(See also Guideline 3.2.5.)**
- b) Services to be provided by pre-qualified engineering firms include, but are not limited to:
 - i) Design of infrastructure (e.g., for culvert crossings, water control structures, bridges, canals, lakes, buildings or other infrastructure needed by the District.
 - ii) Construction services (inspection) on projects designed by the firm or other firms.
 - iii) Negotiation of project engineering agreements as necessary.
 - iv) Attendance at meetings with the District Board, agencies, businesses and organizations, if requested.
 - v) Incorporating hydraulic data supplied by the District’s engineer into project design.
 - vi) Providing project survey and geotechnical services, including clarification of land ownership issues, if necessary.
 - vii) Working in conjunction with District Engineer and Staff to provide various studies, reports and designs.
 - viii) Providing cost estimates for projects
 - ix) All additional services requested by the Board
 - x) Providing annual statements of qualifications and an updated 254 form each calendar year.
 - xi) Providing monthly progress reports to the District Engineer and Manager.

4. DIRECT MATERIALS PURCHASE (SALES TAX EXEMPTION)

- a) AUTHORITY. Section 212.08(6), F.S.; Rules 12A-1.038 & 12A-1.094, F.A.C.; Chapter 2000-423, Laws of Florida; & Chapter 298, F.S., each as they have been or may be amended.
- b) INTENT. It is the intent of the District to maximize its efficient use of limited public resources by taking advantage, where appropriate and permitted by law, of the exemption from state sales tax upon purchase by the District of tangible personal property to be included in or to become part of the Public Works of the District, as that term is defined in section 212.08(6), F.S.. Such purchases are known as "Direct Material Purchases" or "DMP".
- c) APPLICATION. This Policy shall apply to any DMP by the District of tangible supplies and materials manufactured or purchased by District's Contractors for use in the Public Works of the District pursuant to a construction contract, which DMP is equal to or exceeds \$1,000.00 (the "Threshold Value").

5. PROCEDURES.

- a) For each DMP exceeding the Threshold Value, Contractor shall prepare a consecutively numbered Direct Material Purchase Order (DMPO) between District and the specific Supplier/Vendor that excludes Florida's sales tax. District will provide the Contractor with a generic DMPO format. A DMPO shall not be submitted for a material purchase of less than the Threshold Value.
- b) The generic DMPO will be accompanied by the District's Certificate of Sales Tax Exemption and the District's Certificate of Entitlement, copies of which are attached as Exhibits "A" and "B", respectively, and the District's Florida Consumer's Certificate of Exemption (DOR Form DR-14).
- c) To provide adequate time for the District to process a DMPO, the Contractor should transmit a draft of the DMPO to the District's Manager at least five (5) business days prior to the date the DMP is to be delivered to the Project site. The District's Manager will route the DMPO internally to the District's designated staff member for approval.
- d) The District's Manager will route copies of the DMPO as follows:
 - i) The "Vendor Copy" directly to the Supplier/Vendor identified by the Contractor;
 - ii) The "Purchasing Copy" to the Contractor;
 - iii) The third copy to the District's engineer; and
 - iv) The fourth copy retained for District files.

- e) Each DMP shall be delivered to the Project site to the attention of the Contractor's on-site representative. The DMP manifest shall be time stamped, validated and approved by signature by the Contractor's representative.
- f) The Supplier/Vendor of a DMP shall submit an invoice as follows:
 - i) The original invoice to the District; and
 - ii) A copy of the invoice to the Contractor
 - iii) The Supplier/Vendor's failure to send a copy of the DMP Invoice to the Contractor may result in a delay in payment.
- g) The Contractor shall be obligated to timely review each DMP Invoice; submit a written and signed payment recommendation; attach a copy of the signed District purchased materials manifest, and send all of such documentation to the District's Engineer. Upon receipt of said documentation, the District's Engineer shall promptly review same and approve or reject the DMP Invoice in whole or in part, and forward its written recommendation to the District's Manager for processing and payment.
- h) The District will issue a check payable to the Supplier/Vendor for each District-approved DMP Invoice in accordance with the District's standard accounts payable process.
- i) With each of its monthly Pay Applications, the Contractor shall provide to the District and the District's Engineer, a cumulative detailed list of all approved DMPs.

3.9 PROCEDURE UNDER CONSULTS' COMPETITIVE NEGOTIATIONS ACT ("CCNA")

In order to comply with the requirements of Section 287.055, Florida Statutes (regarding certain types of professional services), and the following procedures are outlined for selection of firms or individuals to provide professional services exceeding the thresholds herein described and in the negotiation of such contracts. The Procedure established herein shall be applied to all District projects whose basic construction cost is estimated to be more than that prescribed by law. It may also be used for a planning or study activity when the fee for actual services is expected to exceed that prescribed by law, except in cases of valid public emergencies as certified by the Board.

1. DEFINITIONS

a) **"Professional services"** means:

- (1) Those services within the scope of the practice of architecture, professional engineering, landscape architecture or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect or registered surveyor and mapper, in connection with the firm's or individual's professional employment or practice.

b) **"Project"** means:

- (1) That fixed capital outlay study or planning activity when basic construction cost is estimated by the District to exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FIVE (**see Exhibit "A"**), or for a planning study activity when the fee for professional services is estimated by the District to exceed the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO (**see Exhibit "A"**), as such categories may be amended from time to time by the State of Florida Department of Management Service.

c) **"Continuing Contract"** is:

a contract for professional services (of a type described above), entered into in accordance with this Purchasing Guideline, between the District and a firm whereby the firm provides professional services for the District for work of a specified nature with no time limitation, except that the contract shall provide a termination clause.

2. QUALIFYING PROCEDURES

- a) In order to be eligible to submit a bid proposal, a firm must, at the time of receipt of the bid:
 - i) Hold all required applicable state professional licenses in good standing.
 - ii) Hold all required applicable federal licenses in good standing, if any.
 - iii) Hold a current and active Florida corporate charter or otherwise be authorized to do business in Florida in accordance with Florida law— if the bidder is a corporation or other business organization.
- b) Meet any prequalification requirements set forth in the project or bid specifications. Qualification standards may include but are not limited to, capability and adequacy of personnel, past record, and experience of the bidding entity.
- c) Evidence of compliance with this Purchasing Guideline may be submitted with the bid, if requested by the District.

3. PUBLIC ANNOUNCEMENT

- a) Prior to a public announcement that professional services are required for a project, the Board shall identify the project as meeting the threshold requirement. Except in cases of valid public emergencies as certified by the Board, the District shall announce each occasion when professional services are required for a project by publishing a notice providing a general description of the project and the method for interested consultants to apply for consideration. The notice shall appear in at least one (1) newspaper of general circulation in the District and in such other places as the District deems appropriate. The District may maintain lists of persons interested in receiving such notices. These persons are encouraged to submit annually statements of qualifications and performance data. Persons who provide their name and address to the District Manager for inclusion on the list shall receive notices by mail. The Board has the right to reject any and all bids, and such reservation shall be included in the public announcement. Bidders not receiving a contract award shall not be entitled to recover any costs of bid preparation or submittal from the District. Unless otherwise provided in the notice, bidders/proposers shall be given a maximum of three (3) calendar weeks from the date of mailing/publication of the notice in which to respond to the Manager of the District indicating their interest in the proposed work.

4. **COMPETITIVE SELECTION**

a) Preliminary Selection Process

- i) When all responses are received within the established time frame above, the Manager of the District will reduce the list to those firms which the District Manager determines to be qualified. This may be accomplished without interviews.
- ii) A spreadsheet will be prepared, scoring each qualified firm on each of the following criteria:
 - (1) Qualifications and training of the firms staff with adequate water management and/or special district experience;
 - (2) Past experience of the firm on projects of this magnitude;
 - (3) Experience of principle contacts;
 - (4) Location of firm and/or familiarity by same of project area;
 - (5) Workload of firm in relation to completion of project;
 - (6) Consultant's willingness to meet budget and time requirement;
 - (7) Other reasonable criteria, as determined by the District Manager
 - (8) Where a specific factor is mentioned concerning one firm, the same factor must be referenced as it concerns all other firms.
- iii) The District Manager shall forward to each Commissioner at least one week prior to a scheduled meeting a summary package containing the following:
 - (1) The Invitation to Bid/RFP;
 - (2) The spreadsheet with ranking from highest to lowest score;
 - (3) A list, with a recommended preference, of three or more of those candidate firms which are considered to be the most qualified. The Selection Committee on its own volition may add additional firms to such a list.
 - (4) An informational review sheet of each of the most qualified firm shall be provided to the Board.

- b) The Board shall review and evaluate the data submitted in response to the notice described above regarding qualifications and performance ability, as well as any statements of qualifications on file. The Board shall conduct discussions with, and may require public presentation by firms regarding their qualifications, and/or public presentation, select and list the firms, in order of preference, deemed to be the most

- highly capable and qualified to perform the required professional services, after considering these and other appropriate criteria:
- i) The ability and adequacy of the professional personnel employed by each firm.
 - ii) Each firm's past performance for the District in other professional employment settings
 - iii) The willingness of each firm to meet time and budget requirements.
 - iv) The geographic location of each firm's headquarters or office in relation to the project.
 - v) The recent, current, and projected workloads of each firm.
 - vi) The volume of work previously awarded to each firm.
 - vii) Whether a firm is a certified minority business enterprise.
- c) Nothing in these Guidelines shall prevent the District from evaluating and eventually selecting a firm if less than three (3) responses, including responses indicating a desire not to submit a formal bid on a given project, are received.
- d)** If the selection process is administered by any person other than the full Board, the selection made will be presented to the full Board with a recommendation that competitive negotiations be instituted with the selected firms in order of preference listed.
- e) Final Selection.
- i) The Final Selection Committee shall consist of members of the Board. The firms on the pre-selection list shall be invited to make a presentation to the Board at a properly advertised meeting.
 - ii) Selection will be made at a properly advertised meeting.
 - iii) The Board shall discuss the criteria and information contained in District Manager's spreadsheet.
 - iv) The final vote should be cast at a properly advertised Board meeting. First, a straight vote should be taken. If a tie occurs, a point system vote shall be taken, as follows:
 - (1) Each member shall vote for firms in said member's desired order of preference, keeping in mind the objectives and purpose of the Consultants Competitive Negotiations Act.
 - (2) Points will be assessed in the following manner:
 - (a) Five points for the number one selection (one only);
 - (b) Four points for the number two selections (one only)
 - (c) Three points for the number three selection (one only);
 - (d) Two points for the number four selection (one only);

- (e) One point for the number five selection (one only);
- f) Votes shall be tabulated by the Chairman of the Board.
- g) The preference of negotiations list shall be announced in order of highest to lowest score.

5. COMPETITIVE NEGOTIATION

- a) After the Board has authorized the beginning of competitive negotiations, the District Manager may begin such negotiations with the firm listed as most qualified to perform the required professional services.
- b) In negotiating a lump-sum or cost-plus-a-fixed-fee professional contract for more than the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY THREE, the firm receiving the award shall be required to execute a truth-in-negotiation certificate stating that "wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting." In addition, any professional service contract under which such a certificate is required, shall contain a provision that "the original contract price and any additions thereto, shall be adjusted to exclude any significant sums by which the Board determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs."
- c) Should the District within twenty-one (21) days be unable to negotiate a satisfactory agreement with the firm determined to be the most qualified at a price deemed by the District to be fair, competitive, and reasonable then unless modified by the Board, negotiations with that firm shall be terminated and the District Manager shall immediately begin negotiations with the second most qualified firm. If a satisfactory agreement with the second firm cannot be reached within an additional twenty-one (21) days (unless modified by the Board to the contrary) those negotiations shall be terminated and negotiations with the third most qualified firm shall be undertaken.
- d) Should the District Manager be unable to negotiate a satisfactory agreement with any of the three selected firms within the twenty-one (21) day periods (unless modified by the Board to the contrary) indicated, additional firms may be selected by the District Manager from the list approved by the Board of Commissioners in order of their competence and qualifications. Negotiations may continue, beginning with the first-named firm on the expanded list, until an agreement is reached or the list of firms is exhausted.
- e) Once an agreement with a firm or individual is reached, notice of the award or intent to award, including the rejection of some or all bids, shall be provided in writing to all bidders by United States Mail, by hand delivery, or by overnight delivery service.

6. CONTINUING CONTRACT

- a) Nothing in this Purchasing Guideline shall prohibit a continuing contract between a firm or an individual and the District.

7. EMERGENCY PURCHASE

- a) The District may make an emergency purchase without complying with these Guidelines. The fact that an emergency purchase has occurred or is necessary shall be noted in the minutes of the next Board meeting.

3.10 DESIGN-BUILD CONTRACT COMPETITIVE PROPOSAL SELECTION PROCESS

1. SCOPE

- a) The District may utilize design/build contracts for any public construction project for which the Board determines that use of such contract is in the best interest of the District. When letting a design/build contract, the District shall use the following procedure:

2. PROCEDURE

- a) The District shall utilize a design criteria professional meeting the requirements of section 287.055(2) (k), Florida Statutes, when developing a design criteria package, evaluating the responses or bids submitted by design-build firms, and determining compliance of the project construction with the design criteria package. The design criteria professional may be an employee of the District or may be retained using **Part 3.9.5]** (Procedure under Consultants' Competitive Negotiations Act), herein.
- b) A design criteria package for the construction project shall be developed and sealed by the design criteria professional. The package shall include concise, performance-oriented drawings or specifications of the project, and shall include sufficient information to put interested firms on notice of substantially all of the requirements of the project. If the project utilizes existing plans, the design criteria professional shall create a design criteria package by supplementing the plans with project specific requirements, if any. All design criteria packages shall require firms to submit information regarding the qualifications, availability, and past work of the firms, including the partners and members thereof.
- c) The Board, in consultation with the design criteria professional, shall establish the standards and procedures for the evaluation of design-build proposals based on price, technical, and design aspects of the project, weighted for the project.
- d) After a design criteria package and the standards and procedures for evaluation of proposals have been developed, competitive proposals from qualified firms shall be solicited, pursuant to the design criteria by the following procedure:
 - i) A Request for Proposals shall be advertised at least once in a newspaper of general circulation in the County in which the District is located. The notice shall allow at least seven (7) days for submittal of proposals, unless the Board, for good cause, determines a shorter period of time is appropriate.
 - ii) The District may maintain qualification information, including: capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985, and other factors, on design-build firms. Such firms shall receive a copy of the request for proposals by mail.

- iii) In order to be eligible to submit a proposal: a firm must, at the time of receipt of the proposals:
 - (1) Hold the required applicable state professional license in good standing, as defined by Section 287.055(2)(h), Florida Statutes;
 - (2) Hold all required applicable federal licenses in good standing, if any;
 - (3) Hold a current and active Florida corporate charter or be authorized to do business in Florida in accordance with Chapter 607, F. S., if the bidder is a corporation;
 - (4) Meet any special prequalification requirements set forth in the design criteria package.
- iv) Evidence of compliance with these Guidelines may be submitted with the bid if required by the District.
- e) The board shall select no fewer than three (3) design-build firms as the most qualified, based on the information submitted in the response to the request for proposals, and in consultation with the design criteria professional, shall evaluate their proposals based on the evaluation standards and procedures established prior to the solicitation of requests for proposal.
- f) The board shall negotiate a contract with the firm ranking the highest based on the evaluation standards, and shall establish a price which the board determines is fair, competitive, and reasonable. Should the board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price considered by the board to be fair, competitive, and reasonable, negotiations with that firm must be terminated. The Board shall then undertake negotiations with the second most qualified firm, based on the ranking by the evaluation standards. Failing accord with the second most qualified firm, the board must terminate negotiations. The board shall then undertake negotiations with the third firm. Should the board be unable to negotiate a satisfactory contract with any of the selected firms, the board shall select additional firms in order of their rankings based on the evaluation standards and continue negotiations until an agreement is reached.
- g) After the board contracts with a firm, the firm shall bring to the Board for approval detailed working drawings of the project.
- h) The design criteria professional shall evaluate the compliance of the project construction with the design criteria package, and shall provide the Board with a report of the same.

3. **EMERGENCY PURCHASE**

- A) The Board may, in case of public emergency, declare an emergency and immediately proceed with negotiations with the best qualified design-build firm available at the time. The fact that an emergency purchase has occurred shall be noted in the minutes of the next board meeting.

3.11 BID PROTESTS UNDER CONSULTANTS' COMPETITIVE NEGOTIATIONS ACT

Notwithstanding any other provision in these Guidelines, the resolution of any protests regarding the decision to solicit or award a contract for a bid or proposal subject to the Consultants Competitive Negotiations Act (Section 287.055, Florida Statutes) shall be in accordance with this Part IX.

1. NOTICE

- a) The District shall give all bidders written notice of its decision to award or intent to award a contract (including rejection of some or all bids) by United States Mail, by hand delivery, or by overnight delivery service, and by posting same in the District office for seven (7) days. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Purchasing **Guideline 3.11.1** of the East County Water Control District shall constitute a waiver of proceedings under those Guidelines."

2. FILING

- a) Any person who is affected adversely by the District's decision or intended decision shall file with the District a notice of protest within seventy-two (72) hours after the posting of the final bid tabulation or after receipt of the notice of the District decision or intended decision, and shall file a formal written protest within seven (7) days after the date of filing of the notice of protest. The notice of protest shall identify the procurement by title and number or any other language that will enable the District to identify it, shall state that the person intends to protest the decision, and shall state with particularity the law and facts upon which the protest is based. With respect to a protest of the specifications contained in an Invitation to Bid or in a Request for Proposals, the notice of protest shall be filed in writing within seventy-two (72) hours after the receipt of notice of the project plans and specifications (or intended project plans and specifications) in an Invitation to Bid or Request for Proposals, and the formal written protest shall be filed within seven (7) days after the date when notice of protest is filed. Failure to file a notice of protest (or failure to file a formal written protest) shall constitute a waiver of all further proceedings.

3. AWARD PROCESS

- a) Upon receipt of a notice of protest which has been timely filed, the District shall stop the bid solicitation process (or the contract and award process) until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances which require the continuance of the process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, the award process may continue.

4. MUTUAL AGREEMENT

- a) The District, on its own initiative or upon the request of a protester, shall provide an opportunity to resolve the protest by mutual agreement between the parties within (7)

days (excluding Saturdays, Sundays and legal holidays) upon receipt of a formal written request.

5. FORMAL PROCEEDINGS

- a) If the subject of a protest is not resolved by mutual agreement, a formal proceeding may be conducted in accordance with the procedural requirements set forth in **Part 3.14** of these Guidelines.

3.12 PROTESTS WITH RESPECT TO CONTRACTS AWARDED OR BID DOCUMENTS

Unless otherwise provided in these Guidelines, the resolution of any protests regarding Bid Documents or the decision to award a contract for a bid or proposal shall be in accordance with this **Part 3.12**.

1. NOTICE

- a) The District shall give all bidders or proposers written notice of a decision to award (or reject all bids) by posting the notice in the District office for seven (7) days, with a copy being provided to all submitting firms by United States Mail or by hand delivery. The notice shall include the following statement: "Failure to file a written protest with the District within seventy-two (72) hours following the receipt of notice of the District's decision to award a contract shall constitute a waiver of any objection to the award of such contract."

2. FILING

- a) Any firm or person who is affected adversely by a District decision to award a contract shall file with the District a written notice of protest within seventy-two (72) hours after receipt of the notice of the District's decision, and shall file a formal written protest with the District within seven (7) calendar days after the date of timely filing the initial notice of protest. For purposes of this Purchasing Guideline, wherever applicable, filing will be perfected and deemed to have occurred upon receipt by the District. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object to or protest the District's decision or contract award. The formal written protest shall state with particularity the facts and law upon which the protest is based.
- b) With respect to a protest regarding the Bid Documents, including specifications or other requirements contained in an Invitation to Bid or in a Request for Proposals, the notice of protest shall be filed in writing within seventy-two (72) hours after the receipt of the proposed project plans and specifications or other contract documents. The formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days after the initial notice of protest was filed. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object to or protest with respect to the aforesaid plans, specifications or contract documents.

3. AWARD PROCESS

- a) Upon receipt of a timely filed notice of protest, the District shall abate the contract award process until the protest is resolved by final Board action. However, if the District determines particular facts and circumstances require the continuance of the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, the contract award process may continue. In such circumstances, the contract awarded shall be conditioned on the outcome of the protest.

4. **INFORMAL PROCEEDING**

- a) If the Board determines a protest does not involve a disputed issue of material fact, the Board may (but is not obligated to) schedule an informal proceeding to consider the protest. Such informal proceeding shall be at a time and place determined by the Board. Notice of such proceeding shall be posted in the office of the District not less than three (3) calendar days prior to such informal proceeding, with copy being mailed to the protestant and any substantially affected persons or parties. Within fifteen (15) calendar days following the informal proceeding, the Board shall issue a written decision setting forth the factual, legal and policy grounds for its decision.

5. **FORMAL PROCEEDING**

- a) If the Board determines a protest involves disputed issues of material fact or if the Board elects not to use the informal proceeding process provided above (if available), the District shall schedule a formal hearing to resolve the protest in accordance with the procedural guidelines set forth in **Part 3.14** of these Guidelines.

3.13 BID PROTESTS RELATING TO ANY OTHER AWARD

Notwithstanding any other provision in these Guidelines, the resolution of any protests regarding the decision to solicit or award a contract for a bid or proposal under Parts 3.3 (Purchase of Commodities), 3.4 (Purchase of Maintenance Services), 3.6 (Purchase of Contractual Services), 3.7 (Purchase of Auditor Services), or 3.8 (Contracts for Construction of Authorized Projects) shall be in accordance with this **Part 3.13**.

1. NOTICE

- a) The District shall give all bidders written notice of its decision to award or intent to award a contract—including rejection of some or all bids—by United States Mail, by hand delivery, or by overnight delivery service, and by posting same in the District office for seven (7) days.

2. FILING

- a) Any person who is affected adversely by the District's decision or intended decision shall file with the District a notice of protest in writing within seventy-two (72) hours after the posting of the final bid tabulation or after receipt of the notice of the District decision or intended decision, and shall file a formal written protest within seven (7) days after the date of filing of the notice of protest. The formal written protest shall state with particularity facts and law upon which the protest is based. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of all further proceedings in accordance with Chapter 120, Florida Statutes.

3. AWARD PROCESS

- a) Upon receipt of a notice of protest which has been timely filed, the District shall stop the bid solicitation process or the contract and award process until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances which require the continuance of the process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, the award process may continue.

4. MUTUAL AGREEMENT

- a) The District, on its own initiative or upon the request of a protester, shall provide an opportunity to resolve the protest by mutual agreement between the parties within five (5) working days (excluding Saturdays, Sundays and legal holidays) of receipt of a formal written protest.

5. HEARING

- A) If the subject of a protest is not resolved by mutual agreement within the five (5) day period, the District shall hold in formal or informal proceedings in accordance with the procedural requirements set forth in **Parts 3.11 or 3.14** of these Guidelines.

3.14 FORMAL PROCEEDINGS DETERMINING SUBSTANTIAL INTERESTS

1. CONDUCT OF PROCEEDINGS

- a) Proceedings may be held by the District in response to a written request submitted by a substantially affected person within **fourteen (14) days** after written notice or published notice of District action or notice of District intent to render a decision. Notice of both action taken by the District and the District's intent to render a decision shall state the time limit for requesting a hearing and shall reference these procedural guidelines. If a hearing is held, the Chairman shall designate any Commissioner (including the Chairman), the District Manager, the District General Counsel, or other person to conduct the hearing.
- b) The person conducting the hearing may:
 - i) Administer oaths and affirmations;
 - ii) Rule upon offers of proof and receive relevant evidence;
 - iii) Regulate the course of the hearing, including any pre-hearing matters;
 - iv) Enter orders;
 - v) Make or receive offers of settlement, stipulation, and adjustment.
- c) The person conducting the hearing shall, within thirty (30) days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and a recommendation for final District action.
- d) The District shall issue a final order within forty-five (45) days:
 - i) After the hearing is concluded, if conducted by the Board;
 - ii) After a recommended order is submitted to the Board and mailed to all parties, if the hearing is conducted by persons other than the Board; or
 - iii) After the Board has received the written and oral material it has authorized to be submitted, there has been no hearing.

3.15 disposition of surplus property

1. DISPOSITION IN GENERAL.

In General Pursuant to Sect. 4 (12) of Chap. 2005-308, Laws of Florida and Chap. 274, Florida Statutes, the District hereby adopts the following policies and procedures regarding the sale, lease, disposition, transfer, or encumbrance of surplus property owned by the District for the benefit of the District, except for environmentally sensitive property as designated by the FDEP. When property belonging to the District is obsolete or the continued use of which is no longer economical or efficient for District purposes or no longer serves a useful function, the property may be donated or sold to another governmental unit or to the public in the manner provides by law and these Guidelines.

- a) **Alternative Procedures Available** - Taking into consideration the best interests of the District, the District may dispose of for value to any person, or may dispose of for value without bids to the State, to any governmental unit or to any political subdivision of the State, regional or local government, or, if the property is without commercial value, may donate, destroy, or abandon property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, which property is not otherwise lawfully disposed of. The determination of property to be disposed of by the District instead of pursuant to other provisions of law shall be at the election of the District in the reasonable exercise of its discretion. Property, the value of which the District estimates to be under \$5,000, may be disposed of in the most efficient and cost-effective means as determined by the District. Any sale of property the value of which the District estimates to be \$5,000 or more shall be sold only to the highest responsible bidder, or by public or private auction, after publication of notice not less than 1 week nor more than 2 weeks prior to sale in a newspaper having a general circulation in the County and in additional newspapers, if in the judgment of the District the best interests of the District will better be served by the additional notices. Authority for the disposal of property shall be recorded in the minutes of the District

2. RESOLUTION OF BOARD

- a) **Declaration of Surplus Property** - Except for environmentally sensitive property as designated by the FDEP, the District shall have the discretion to classify as surplus any of its property, which property is not otherwise lawfully disposed of, that is obsolete or the continued use of which is uneconomical discretion and having consideration for the best interests of the District, the value and condition of property classified as surplus, and the probability of such property's being desired by the prospective bidder or donator to whom offered, the District may offer surplus property to other governmental units in the County for sale or donation or may offer the property to private nonprofit agencies by sale or donation. If the surplus property is offered for sale and no acceptable bid is received within a reasonable time, the District shall offer such property to such other governmental units or private nonprofit agencies as determined by the District on the basis of the foregoing criteria. Such offer shall disclose the value and condition of the property. The best bid shall be accepted by the District. The cost of transferring the property shall be paid by the District or the private nonprofit agency purchasing or receiving the donation of the surplus property.

b) Resolution of Board

The Board shall adopt a resolution declaring the property to be obsolete or the continued use of which is not economical or efficient for District purposes and no longer serves a useful function and it is therefore in the best interests of the District to dispose of the property. The resolution shall specify whether the Board will sell the property to another governmental unit pursuant to **Policy Guideline 3.15.3**, to the public pursuant to **Policy Guideline 3.15.4**, or be donated pursuant to Policy Guideline 3.15.5.

3. SALE TO OTHER GOVERNMENTAL UNITS

Pursuant to Section 274.05, Florida Statutes, the District may offer the surplus property to other governmental units.

- a) The offer for sale shall be made first to other governmental units located in the same County in which the District is situated. A bid may be accepted if the Board determines the bid to be timely and within the best interests of the District. Such determination shall be recorded in the minutes of the Board.
- b) If no acceptable bid is received from a governmental unit located in the same county as the District, the District shall offer the property to other governmental units. The highest bid in the best interests of the District shall be accepted.
- c) All notices pursuant to this Section shall be written notices conforming to the requirements of **Guideline 3.2.13**.
- d) Nothing in this section shall prohibit the District from offering surplus property to the public pursuant to **Guideline 3.15.4** if it determines sale to another governmental unit would not be in the best interests of the District

4. SALE TO THE PUBLIC

Pursuant to Section 274.06, Florida Statutes, the District may offer surplus property to the public for sale to the highest responsible bidder.

- a) If the value of the property as determined by the Board is less than \$1000.00, the property may be sold to the highest responsible sealed bidder after a request for bids is published in a newspaper of general paid circulation or by public auction.
- b) If the value of the property as determined by the Board is \$1000.00 or more, the District shall advertise the sale of the property in a newspaper of general paid circulation, not less than one week nor more than two weeks prior to the date of sale or auction. The property shall be sold to the highest bidder.

All notices pursuant to this section shall be published in newspaper(s) of general paid circulation and shall conform to the requirements of **Guideline 3.3.3.C**.

5. CONTENT OF NOTICE

- a) All notices pursuant to Part V111 of these Guidelines shall contain the following information:
 - (1) The place where bids will be received;
 - (2) The ending time of the bidding process;
 - (3) A description of the property to be sold;
 - (4) An item and place for inspection of the surplus property or the person and place to which inquires regarding the property may be directed. The District may at its discretion specify another reasonable method for disseminating information about the property to be sold.
- ii) All notices shall contain the following statements:
 - (1) The statement: The District reserves the right to reject any and all bids;
 - (2) Surplus property shall be sold to the highest responsible bidder.
- iii) The District may publish additional notices if, in the District's judgment, the best interests of the District will be served by additional notices.
 - (1) When surplus real estate, the Board may engage the services of the District's real estate consultant, who shall market and sell these properties in a manner consistent with Board direction.

6. DONATION OF SURPLUS PROPERTY

- a) If the surplus property is valued at \$100.00 or less, as determined by the Board, and the Board finds the property is without commercial value, the District may donate the property to the charitable organization of its choice

SECTION 287.017, FLORIDA STATUTES

The 2005 Florida Statutes

Title XIX
PUBLIC BUSINESS

Chapter 287
PROCUREMENT OF PERSONAL PROPERTY AND SERVICES

287.017 Purchasing categories, threshold amounts; procedures for automatic adjustment by department.

(1) The following purchasing categories are hereby created:

- (a) CATEGORY ONE: \$15,000.
- (b) CATEGORY TWO: \$25,000.
- (c) CATEGORY THREE: \$50,000.
- (d) CATEGORY FOUR: \$150,000.
- (e) CATEGORY FIVE: \$250,000.

(2) The department shall adopt Rules to adjust the amounts provided in subsection (1) based upon the rate of change of a nationally recognized price index. Such Rules shall include, but not be limited to, the following:

- (a) Designation of the nationally recognized price index or component thereof used to calculate the proper adjustment authorized in this section.
- (b) The procedure for rounding results.
- (c) The effective date of each adjustment based upon the previous calendar year data.

History.--ss. 5, 13, ch. 86-204; ss. 12, 34, ch. 90-268; s. 3, ch. 96-236; s. 17, ch. 98-65; s. 75, ch. 98-279; s. 43, ch. 99-399; s. 9, ch. 2002-207.

SECTION 255.20, FLORIDA STATUTES

The 2005 Florida Statutes

TITLE XVII
PUBLIC LANDS AND PROPERTY

CHAPTER 255
PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS

255.20 Local bids and contracts for public construction works; specifications of state produced lumber

- 1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have a cost of more than \$50,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, construction costs include the cost of all labor, except inmate labor, and include the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process:
 - a) Notwithstanding any other law to the contrary, a county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at costs in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. Any contractor may be considered ineligible to bid by the governmental entity if the contractor is behind on

completing an approved progress schedule for the governmental entity by 10 percent or more at the time of advertisement of the work. Any contractor pre-qualified and considered eligible by the Department of Transportation to bid to perform the type of work described under the contract shall be presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

- b) With respect to contractors not pre-qualified with the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications shall include notice of a public hearing for comment on such criteria and procedures prior to adoption.

The procedures shall provide for an appeal process within the authority for objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

- c) The provisions of this subsection do not apply:
 - i) When the project is undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:
 - (a) An immediate danger to the public health or safety;
 - (b) Other loss to public or private property which requires emergency government action; or
 - (c) An interruption of an essential governmental service.
 - ii) When, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or responses.
 - iii) To construction, remodeling, repair, or improvement to a public electric or gas utility system when such work on the public utility system is performed by personnel of the system.
 - iv) To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.
 - v) When the project is undertaken as repair or maintenance of an existing public facility.
 - vi) When the project is undertaken exclusively as part of a public educational program.
 - vii) When the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

- viii) When the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project before completion or the local government has terminated the contract.
- ix) When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment.

In deciding whether it is in the public's best interest for local government to perform a project using its own services, employees, and equipment, the governing board may consider the cost of the project, whether the project requires an increase in the number of government employees, an increase in capital expenditures for public facilities, equipment or other capital assets, the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.

- x) When the governing board of the local government determines upon consideration of specific substantive criteria and administrative procedures that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor according to procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted prior to July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner. This exception shall apply when all of the following occur:
 - (1) When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting ordinance.
 - (2) In the event the project is to be awarded by any method other than a competitive selection process, the governing board must find evidence that:

- (a) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or
 - (b) The time to competitively award the project will jeopardize the funding for the project, or will materially increase the cost of the project or will create an undue hardship on the public health, safety, or welfare.
 - (3) In the event the project is to be awarded by any method other than a competitive selection process, the published notice must clearly specify the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.
 - (4) In the event the project is to be awarded by a method other than a competitive selection process, the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection; and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.
- xi) To projects subject to chapter 336:
- (1) If the project is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to re-bid the project or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or non-responsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.
 - (2) If the project uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.
 - (3) If the project is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.
- xii) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.
- xiii) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using

its own employees in a county that does not issue registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

- xiv) Projects performed by a local government using its own services and employees must be inspected in the same manner as inspections required for work performed by private sector contractors.
 - xv) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.
 - xvi) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.
- 2) The threshold amount of \$200,000 for construction or \$50,000 for electrical work must be adjusted by the percentage change in the Consumer Price Index from January 1, 1994, to January 1 of the year in which the project is scheduled to begin.
- 3) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must always specify lumber, timber, and other forest products produced and manufactured in this state whenever such products are available and their price, fitness, and quality are equal. This subsection does not apply when plywood specified for monolithic concrete forms, when the structural or service requirements for timber for a particular job cannot be supplied by native species, or when the construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture.
- 4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall have standing to challenge the propriety of the local government's actions when the local government seeks to invoke the provisions of this section. The prevailing party in such action shall be entitled to recover its reasonable attorney's fees.

History.--s. 1, ch. 61-495; s. 1, ch. 94-175; s. 4, ch. 95-310; s. 5, ch. 95-341; s. 1, ch. 99-181; s. 62, ch. 2002-20; s. 9, ch. 2003-286.

EAST COUNTY WATER CONTROL DISTRICT
CERTIFICATE OF TAX EXEMPTION
DISTRICT'S AUTHORIZATION TO MAKE PURCHASES
ON BEHALF OF AN EXEMPT GOVERNMENTAL UNIT

DATE

TO: _____

SELLING VENDOR'S NAME

SELLING VENDOR'S ADDRESS

The undersigned is an authorized representative of the exempt Governmental Unit identified below. The purchase or lease of tangible personal property or services made on or after _____ (Dates[s]) from the business identified above is for use by the exempt Governmental Unit identified below. The charges for the purchase or lease of tangible personal property or services from the vendor identified above are to be billed to and paid directly by said exempt Governmental Unit.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

AUTHORIZED SIGNATURE ON BEHALF OF EXEMPT GOVERNMENTAL UNIT

TITLE

East County Water Control District
615 Williams Avenue, Suite 202
Lehigh Acres, FL 33972

CONSUMER'S CERTIFICATE OF EXEMPTION NUMBER _____

**THIS CERTIFICATE MAY NOT BE USED TO MAKE PURCHASES OR LEASES OF TANGIBLE
PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR
THE PERSONAL USE OF ANY INDIVIDUAL REPRESENTING THE EXEMPT ENTITY
IDENTIFIED ABOVE.**

EXHIBIT 3D

EAST COUNTY WATER CONTROL DISTRICT

FLORIDA SALES TAX EXEMPTION

DIRECT MATERIALS PURCHASE

CERTIFICATE OF ENTITLEMENT

I, the undersigned authorized representative of East County Water Control District (hereafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number _____, affirms that the tangible personal property purchased pursuant to Purchase Order No. _____ from _____ (Vendor) on or after _____ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # _____ with _____ (Name of Contractor) for the construction of _____.

I certify that the purchase of the materials contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

- ___ 1. The attached Purchase Order is issued directly to the vendor supplying the materials the contractor will use in the identified public works.
- ___ 2. The vendor's invoice is issued directly to the District.
- ___ 3. Payment of the vendor's invoice is made directly by the District to the vendor from public funds.
- ___ 4. The District will take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor.
- ___ 5. The District assumes the risk of damage or loss at the time of purchase.

I understand that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., the District will be subject to the tax, interest, and penalties due on the materials purchased. If the Department of Revenue determines that the materials purchased tax-exempt by issuing this Certificate do not qualify for the exemption, the District will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative

Title:

Purchaser's Name (Print or Type)

Date

Federal Employer Identification Number

Telephone Number:

You must attach the Purchase Order and the Florida Consumer's Certificate of Exemption issued to the District.

DO NOT SEND TO THE DEPARTMENT OF REVENUE. THIS CERTIFICATE OF ENTITLEMENT MUST BE RETAINED IN THE VENDOR'S AND THE CONTRACTOR'S BOOKS AND RECORDS.