

SUPERSTITION MOUNTAINS COMMUNITY FACILITIES DISTRICT NO. 1



Procurement Policy

**As Amended on
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SUPERSTITION MOUNTAINS COMMUNITY FACILITIES DISTRICT NO. 1 PROCUREMENT POLICY

SECTION 1.0 GENERAL POLICY REGARDING PROCUREMENT

The purpose of this Procurement Policy (the "Policy") is to ensure that the District maximizes the value of resources expended to obtain desired goods and services. This Policy is intended to allow for efficiencies in procurement while maintaining adequate controls. This Policy applies to all staff involved in the procurement process and to all types of procurement.

1.1. Authority of the Board of Directors

The Board of Directors has the sole authority to establish the District's Procurement Policy.

1.2. Authority of the District Manager

The District Manager is responsible for the day-to-day operation of the District and is authorized by the Board to enforce this Procurement Policy.

1.3. Requirement for Funds Availability

The District Manager is responsible for ensuring that all expenditures remain within authorized budget limits. District funds cannot be obligated or spent unless sufficient, unencumbered funds are available to make the expenditure.

1.4. Conflicts

All procurement agreements will be subject to and provide notice of Ariz. Rev. Stat. Ann. § 38-511.

SECTION 2.0 PROCUREMENT AUTHORIZATION

2.1. District Manager Authorization Requirements

The procurement of items costing less than \$1,000 may be approved by a Supervisor. Purchases of \$1,000 or more must be approved by the District Manager or designee.

2.2. Board of Directors Authorization Requirements

Authorization is required from the Board prior to the procurement of all commodities, services or projects that equal or exceed \$50,000, unless specifically exempted elsewhere in this policy.

SECTION 3.0 PURCHASING

Purchasing is a function within the Financial Services Department that is responsible for all procurement from outside vendors. Purchasing will place all orders, receive all bids and enter into all negotiations with suppliers unless specifically exempted elsewhere in this policy.

3.1. Responsibilities and Functions of Purchasing

The general responsibilities and functions of Purchasing are as follows:

- 3.1.1.** To purchase supplies, materials, equipment and services for all District departments in a timely and cost-effective manner ;
- 3.1.2.** To arrange for the delivery of goods and services to meet the requirements of the requesting department;
- 3.1.3.** To handle purchasing related complaints, claims and adjustments, and to negotiate for the return of material;

- 3.1.4. To correspond with suppliers relating to bids, quotes and purchase orders;
- 3.1.5. To consolidate purchases for quantity discounts wherever possible;
- 3.1.6. To arrange for the disposal of all materials which have been declared surplus or obsolete by the District Manager;
- 3.1.7. To furnish to departments, upon request, prices or cost estimates for materials, services and/or supplies.

SECTION 4.0 PURCHASING POLICIES

4.1. Competitive Bids

All purchases of \$100,000 or greater will be awarded as a result of a competitive bid unless specifically exempted elsewhere in this policy.

4.2. Competitive Quotes

All purchases over \$10,000 but less than \$100,000 shall be competitively quoted unless specifically exempted elsewhere in this policy.

4.3. Specifications for Purchases

Whenever possible, all specifications for materials, supplies, equipment and services will be worded or designed to permit open and competitive procurement. Solicitations will be considered open and competitive when the bid specifications are based upon one of the following:

- 4.3.1. Specification based on brand names, product numbers, trade names, model numbers or other descriptions unique to specific brand products to establish a required level of quality and functional capabilities; comparable products of other manufacturers will be considered if proof of comparability is contained in the bid. It is the bidder's responsibility, including bidders whose product is referenced, to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of a bid;
- 4.3.2. Specifications based on standard specifications;
- 4.3.3. Specifications based on qualified products list;
- 4.3.4. Specifications based on catalog descriptions.

4.4. Minimum Number of Bids or Quotes

The number of bids or quotes required shall be as follows:

- 4.4.1. If the estimated amount of the purchase is \$100,000 or more, written sealed bids must be solicited from a minimum of two (2) vendors.
- 4.4.2. If the estimated amount of the purchase is at least \$10,000 but less than \$100,000, quotes must be solicited from at least two (2) qualified vendors.

4.5. Contracts, Leases, Rentals and Service Agreements

All contracts, leases, rentals and service agreements providing for payments in excess of \$50,000 per year shall be expressly subject to the approval of the Board of Directors unless the standard, approved District contract is utilized.

District Board approval is required for any contract, lease or agreement that:

- 4.5.1.** Is made with another governmental entity.
- 4.5.2.** Is made with an employee, member of the employee's immediate family, family related business or organization; or any person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement or that has a financial interest pertaining to the procurement.
- 4.5.3.** Is for a term greater than 5 years.
- 4.5.4.** Contains any provision concerning default by the District, commencement of any legal proceeding or payment of attorney's fees.
- 4.5.5.** Provides for prepayment for any goods or services in excess of \$50,000.

All contracts, leases, rentals and service agreements shall contain all necessary requirements provided by Federal or State laws and regulations.

SECTION 5.0 COMPETITIVE BID POLICY

5.1. Notice Inviting Bids

- 5.1.1.** The notice inviting bids must include a description of the project, articles or services to be purchased.
- 5.1.2.** The notice must state where the full bid package and forms can be obtained.
- 5.1.3.** The notice must state the date, time and place for opening bids.

5.2. Bidder Security

- 5.2.1.** The bid package may require each bidder to file a bid deposit in the form of a certified check, bank draft or cashier's check. A bid bond will be acceptable in lieu of a certified check, bank draft or cashier's check if so specified in the bid package.
- 5.2.2.** A successful bidder may forfeit bid security upon refusal or failure to execute the contract within the time specified, unless the District is responsible for the delay or expressly allows for the delay.
- 5.2.3.** Any bid deposit will be considered as security for full performance of all obligations imposed on the bidder, including, but not limited to, the obligation to keep the price or bid firm for the period specified in the bid package and the obligation to file a performance or payment bond, if required, when a contract is awarded. If the bidder fails to perform any such obligation, the District will cash the deposit and retain from the proceeds an amount sufficient to compensate the District for damages suffered. The District may retain the bid deposit as liquidated damages if the bid information so specifies.
- 5.2.4.** Unsuccessful bidders will be entitled to the return of any bid security.

5.3. Acceptance of Bids

- 5.3.1. Bids must be received at the specified location on or before the date and time designated in the bid package. Late bids will not be considered. All late bids received will remain the property of the District.
- 5.3.2. Each bid must specify the full name and business address of the bidder, be legible and be signed by an authorized representative of the bidder. Unsigned bids may be rejected.
- 5.3.3. Alternate bids will not be considered unless specifically called for.

5.4. Withdrawals, Revisions and Rejection of Bids

- 5.4.1. Before bid opening, a bidder is permitted to withdraw a bid entirely and/or submit a substitute bid. The bidder making such a request must submit suitable identification. A bid may not be revised after bid opening.
- 5.4.2. After bid opening, but before award, a bidder will be permitted to withdraw a bid where there is credible evidence that enforcement of the bid would impose unconscionable hardship on the bidder.
- 5.4.3. In cases of errors in the extension of prices in the bid, the unit price will govern.
- 5.4.4. The District may waive minor informalities in a bid response or allow the bidder to correct them if correction is advantageous to the District. A minor informality is a mistake that has negligible effect on the bid and the waiver or correction does not materially impact other bidders.
- 5.4.5. All bids shall be subject to rejection by the District at the sole discretion of the District.

5.5. Opening Public Bids

- 5.5.1. All bids received will be opened in public at the date, time and place stated in the notice inviting bids. A tabulation of all bids received shall be available to the public for inspection following the bid opening.
- 5.5.2. No award will be made at the time of the public bid opening.

5.6. Award of Bid

If an award is made, it shall be to the qualified and responsible bidder whose proposal is satisfactory to the District, taking into consideration factors including but not limited to the amount of the bid, the apparent ability of the bidder to perform the proposed contract, the conformity of the articles or services to the specifications, any discount allowed for prompt payment, transportation charges, and the date of delivery specified in the notice inviting bids.

5.7. Performance and Payment Bonds

The District may require that the successful bidder file a Performance and Payment Bond for any amount up to 100% of the amount of the contract, written by a surety company acceptable to the District. It may be required that the bond be filed within a specified number of days after the award is made, or the contract shall be canceled and the contractor shall be liable for any damages.

The Bond shall be conditioned on full performance of all obligations imposed on the bidder by the contract with the District. It shall provide that, if the bidder fails to perform any of its obligations, the District may recover from the bidder and the surety (or either of them) any and all damages suffered because of the breach of contract or performance in accordance with terms of the contract.

5.8. Protest of Bid

5.8.1. Right to Protest

An aggrieved bidder may submit a protest in writing to the District Manager within ten (10) business days after the date the bid is awarded.

5.8.2. Authority to Resolve Protest

The District Manager shall review all bid protests and provide a decision to the aggrieved bidder in writing. If a protest is not resolved to the satisfaction of the aggrieved bidder, the bidder may request an opportunity to be heard by the Board of Directors at one of its regularly scheduled meetings. Requests to appear before the Board must be submitted to the Board within ten (10) business days of a written decision from the District Manager. The District Board of Directors, in consultation with the District's legal counsel, shall review the request. The determination of the District's Board of Directors shall be final and given in writing to the aggrieved bidder.

5.8.3. Stay of Award During Protest

An aggrieved bidder may request a stay of award of bid prior to the execution of any contract. Upon notification of a request for a stay of award, the proposed acquisition will not proceed until the protest has been resolved, unless the District Manager makes a written determination that continuation of the bid process or the award of the contract without delay is necessary to protect the interests of the District.

5.9. Tie Bids

A tie bid exists when two or more bid responses meet all specifications, terms and conditions at identical prices, including cash discounts. A tie bid will be awarded to the bidder whose bid was received first.

SECTION 6.0 EXCEPTIONS TO PURCHASING POLICIES

This section includes items and services that because of their proprietary nature, existing experience, warranty, or other relevant factors make the competitive bidding or quoting process not practical or advantageous to the District. The following are exempt from the competitive bidding or quoting process.

6.1. Exempt Commodities and Services¹:

6.1.1. Purchases less than \$10,000.

6.1.2. Items purchased through a State Procurement Contract or under a contract that was awarded as a result of a competitive bid by another public agency or cooperative where the District is able to purchase the same items or services for the same cost and under substantially the same terms and conditions as that public agency.

6.1.3. Software purchases or subscriptions for specialized applications such as utility billing, supervisory control and data acquisition (SCADA), asset management and work order management.

6.1.4. Professional services such as appraisal, architectural, certified public accountant, dental, employment, engineering, financial, legal, medical, nursing, physician, psychologist or any healthcare related affiliations, surveying, or technological.

6.1.5. Periodical subscriptions, memberships, and dues.

6.1.6. Freight and postage charges, including the purchase of metered or bulk mail postage.

- 6.1.7. Recording fees for legal recording of disconnection, reconnections, easements, settlement agreements, etc.
- 6.1.8. Testing services.
- 6.1.9. Advertising.
- 6.1.10. Insurance policies.
- 6.1.11. Purchases made from Arizona industries for the blind, certified nonprofit agencies that serve individuals with disabilities and Arizona correctional industries. A certified nonprofit agency is one that is a) organized under the laws of this state or another state, is operated in the interest of disabled individuals and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and b) complies with any applicable occupational health and safety standard required by the laws of the United States and Arizona.

6.2. Sole Source and Proprietary Purchases

There are cases where the District's needs for continued operation and maintenance of specific types of equipment, software or systems may only be met by one manufacturer or vendor. In those cases, sole source or proprietary purchases are permitted. The differences between the two are as follows:

6.2.1. Sole Source Purchases

Sole source procurement occurs when items or knowledge are unique and possess specific characteristics that can be filled by only one source. All authorized sole source items may be procured utilizing non-competitive negotiation.

6.2.2. Proprietary Purchases

A proprietary product is one that is manufactured and marketed by an entity having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that quotes or bids may be obtained from different franchises, the procurement must follow the standard procurement policy.

6.3. Utility Contracts

Utility services such as telephone, internet, electric, gas, trash collection and water must be obtained on a competitive basis whenever possible, unless it has been determined that the purchase is sole source. If the purchase has been determined to be sole source, the purchase may then be made pursuant to the Sole Source and Proprietary Purchase section of this Policy and will not require Board approval.

6.4. Emergency Purchases

The District Manager or designee may authorize the purchase of specific material, supplies, equipment or services for immediate delivery if there exists a threat to public health, welfare or safety; a situation exists which makes compliance with the procurement policy contrary to the public interest; there is immediate need to prepare for national or local defense or assistance; or there is a breakdown in machinery or in an essential service which requires the immediate purchase of equipment, supplies or services to protect the public health, welfare or safety. A written statement to document the circumstances of any emergency must accompany the purchase. All emergency purchases shall, if practical, be made on the basis of competitive quotes.

6.5. Competitive Negotiation

A contract may be entered into by competitive negotiation only in cases when the District is unable to obtain needed goods and/or services by competitive bid process. The District Manager or designee shall prescribe the procedure for the negotiation. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process.

In the event it appears that the competitive negotiation process is to be implemented, the District Manager or designee must approve such an action. Once the negotiations have been concluded, a recommendation shall be made to the District Manager or designee, for approval and authorization prior to entering into a contract or issuing a purchase order.

6.6. Employment Related

This policy does not apply to certain employment related items including: salary, retirement, insurance benefits, settlements, severances, negotiations or related expenditures.

SECTION 7.0 OTHER PROVISIONS

7.1. Gifts

If a current or prospective vendor offers services, merchandise and/or equipment as an outright gift, and the value is greater than \$25, permission to accept or receive the services, merchandise or equipment must be requested in writing from the District Manager. A complete description of the services, merchandise or equipment and a clear statement of the conditions the gift is being offered should be given. Acceptance cannot be made until proper approval is received. Approved items must be reported to and, when possible, physically accepted by Purchasing for final distribution based upon direction received from the District Manager.

7.2. Restrictions on Certain Purchases

No personal items can be purchased through the District or with funds of the District.
District letterhead or email cannot be used for ordering personal items.

7.3. Purchase Card

The provisions of this Procurement Policy shall govern all purchases made with a District authorized purchase card.

7.4. Coordination of Purchasing Functions

When writing specifications and conducting competitive bidding, the District should give consideration to the inclusion of wording that would allow other public agencies to purchase from the successful bidder the same items under the same terms and conditions.

SECTION 8.0 DISPOSAL OF PROPERTY

Materials and equipment that are no longer needed by the District may be disposed of in a manner determined by the District Manager. Acceptable disposal methods include trade in; donation to another governmental entity or non-profit organization; sale at an internal or external surplus auction; and/or sale to a recycling or scrap facility.

¹ *Architect services, assayer services, construction services, engineer services, geologist services, landscape architect services and land surveying services are subject to Title 34, Chapters 1 (Employment of Special Services), 2 (Employment of Contractors) and 6 (Architect Services, Assayer Services, Construction Services, Geologist Services, Landscape Architect Services and Land Surveying Services) of the Arizona Revised Statutes and may need to be competitively bid or subject to other purchasing requirements.*