

## **FLORIN RESOURCE CONSERVATION DISTRICT**

### **ADOPTED BY FRCD RESOLUTION NO. 09.15.20.01**

#### **PUBLIC WORKS CONSTRUCTION CONTRACTS POLICY**

**Purpose of the Policy:** The purpose of this policy is to establish the Florin Resource Conservation District (District) officers' authority and procedural requirements for Public Works Construction Contracts. All contracts for public works construction services required by the District shall be made in accordance with this policy.

**Section 1.** Public Works Construction Projects shall include the construction, reconstruction, erection, alteration, renovation, improvement, demolition, painting or repair of any publicly owned, leased or operated facility.

**Section 2.** Capital improvement projects can be completed under numerous contractual formats between the owner, and design and construction service providers. Three delivery methods for public works projects are design-bid-build (DBB), design/build (DB) and design-assist/build (DAB). DB and DAB shall only be considered in accordance with California law. The District will utilize the method deemed most appropriate based on capacity, cost, risk and schedule:

(1) Design-bid-build (DBB): owner contracts separately with a designer and a contractor. The design firm is hired to deliver 100 percent complete design documents. The owner or agent then solicits fixed price bids from contractors to perform the work. Designers and contractors bear no contractual obligation to one another and the owner bears all risk associated with the completeness of the design documents.

(2) Design/build (DB): owner typically hires a single entity, the design/builder, to perform both design and construction under a single contract. Portions or all of the design and construction may be performed by the entity or subcontracted to other companies. DB is characterized by high levels of collaboration between the design and construction disciplines, input from multiple trades into the design, and a single entity bearing project risk. Typically, the general contractor is responsible contractually for this delivery method. One variation of DB is to have the builder provide the owner with a construction cost estimate at the 75% design stage. Based on the cost estimate, the owner reserves the option to sever ties with the builder and bid the project instead.

(3) Design-Assist/Build (DAB): owner contracts separately with a designer and contractor. The design firm partially completes the design at which time the contractor is selected through a competitive process based upon a combination of qualifications and quantitative criteria. The contractor's contract is typically a two-part contract: the first part is for pre-construction services, and the second part is for construction services, where the contract price for construction services is not established until after subcontractor bidding. During the preconstruction services phase, the contractor budgets the costs of the project

at stages throughout the design. At an agreed-upon stage of the design, usually when the design is completed, the contractor then puts the project out to bid to the subcontractor community, and the contractor proposes a contract price for construction. The owner has the option to terminate the contractor contract at completion of preconstruction services, in addition to all other termination rights it has, if a contract price cannot be agreed upon or if the owner loses confidence in the contractor's ability to perform the construction.

**Section 3.** Before a contract is signed by any District representative or is brought to the District Board of Directors (Board) as an agenda item, the contract must:

- (1) Include appropriate insurance and indemnification provisions reviewed by District Legal Counsel;
- (2) Be approved as to form by District Legal Counsel;
- (3) Be approved as to budget availability and purchasing procedural compliance by the General Manager or Finance Manager; and
- (4) Be signed by the other party unless it's a contract that must go before the Board and requires the other party to acquire payment and/or performance bonds. In this case, the contract shall be taken to the Board unsigned by either party.

**Section 4.** Each contract entered into under the policy shall be filed with the Finance Supervisor and shall be retained in accordance with the District's adopted retention policy.

**Section 5.** It is against District policy to split into smaller orders the contract for services for the purpose of evading the competitive bidding provisions of this policy.

**Section 6.** The General Manager or the Board may reject any or all bids received as part of the bidding process.

**Section 7.** The procedures and rules for public works construction contracts are as follows:

(1) *Public Works Construction Contracts (Contracts valued less than \$100,000) using the DBB method:* For Public Works Construction Contracts valued less than \$100,000, District staff shall use the following informal, competitive bidding procedures:

- i. Solicit informal bids or quotations by written request (via fax, e-mail, or mail) from at least three contractors, or justify why such quotations were not possible or justified;
- ii. The District shall select the Bidder quoting the lowest responsive, responsible quotation. If another Bidder is selected, the reasons for not selecting the Bidder with the lowest quote shall be documented and included as an attachment to the owner's record of contract;
- iii. **Execution of Contract.** A construction contract (short-form version) shall be used as the form of contract and must be approved by the General

Manager. Two (2) copies of the contract must be wet signed by the successful Bidder and both wet-signed copies returned to the District, together with complete, certified copies of the Performance Bond, Payment Bond and certificates of insurance, within 10 calendar days of the Bidder's receipt of the construction contract documents. Prior to the General Manager approving the contract, District Legal Counsel shall review the contract and provide approval as to the contract's form. After legal counsel review, the General Manager shall review the construction contract, the availability of budgeted funds to cover the contract, and compliance with proper contracting procedures;

- iv. A multiple year contract with a total cost that is projected to cost less than \$100,000 over the term of the contract shall be governed by the same procedures above.
- v. **Change Orders.** For contracts valued at less than \$100,000, the General Manager may approve change orders or contract amendments. Change orders more than 20% of the original contract must be reported to the Board at the next regular Board meeting. In the event that the change order and the original contract amount exceeds the General Managers signing authority of \$100,000, the change order must be approved by the Board.

(2) *Public Works Construction Contracts (Contracts valued at \$100,000 or more) using the DBB method:* For Public Works Construction Contracts valued at \$100,000 or more, District staff shall use the following formal, competitive bidding procedures:

- i. **Call for Bids.** After preparation of plans and specifications, a notice inviting sealed bids shall be published in a newspaper of general circulation in the District a minimum of 14 days in advance of the bid opening, however, it is preferred to give 3 weeks' notice before bid opening. The notice inviting sealed bids shall also be advertised on the District's website and shall be sent to such interested persons as may be determined by the General Manager.
  - a. Form of Call for Bids. The invitation for bids shall contain:
    - i. A statement that the plans and specifications of the Work to be constructed may be purchased at the District Office;
    - ii. A particular description of the portion of the Work advertised if less than the whole Work is advertised;
    - iii. A statement that the District will receive sealed bids for the construction of the Work advertised or any portion of the Work designated by the District;

- iv. A statement that the contract or contracts for the Work advertised will be awarded to the lowest responsive, responsible Bidder or Bidders, but that any or all bids may be rejected;
  - v. A statement of the time and place for opening the bids; and
  - vi. Such other information as may be required by the District.
- ii. **Submission of Bids.** Bids shall be submitted on forms supplied by the District, and under sealed cover. Each bid shall be accompanied by cash, a certified cashier's check, or bond secured from a surety company satisfactory to the District in the amount indicated within the bid documents, as bid security.
- iii. **Opening of Bids.** Bids shall be publicly opened at the time and place specified in the Call for Bids.
- iv. **Bid Acceptance and Evaluation.** Acceptance of any bid shall be by action of the Board. The Board reserves the right to waive any irregularity; to reject any or all bids, and to re-advertise for bids, or proceed to construct the Work, or any part of it with District forces.
  - a. Bids containing omissions, erasures, alterations, conditions, or additions not called for can be rejected.
- v. **Bid Award.** The Board shall award the contract for the Work to the lowest responsive, responsible Bidder.
  - a. In determining whether a bidder is responsible, consideration may be given to:
    - i. The ability, capacity and skill of the Bidder to perform the Work;
    - ii. The ability of the Bidder to perform the Work within the time specified without delay;
    - iii. The ability of the Bidder to perform the Work in a safe manner;
    - iv. The character, integrity, reputation, judgment, experience and efficiency of the Bidder; and
    - v. The quality of the Bidder's performance on previous work with the District.

vi. **Relief of Bidders.**

a. A Bidder shall not be relieved of his/her bid unless by consent of the Board of Directors upon a showing by the Bidder to the satisfaction of the Board that:

i. A mistake was made; and

ii. The Bidder gave the District written notice within five days after the opening of bids of the mistake; specifying in the notice in detail how the mistake occurred; and

iii. The mistake made the bid materially different than the bidder intended it to be; and

iv. The mistake was made in filling out the bid and not due to error in judgment or carelessness in inspecting the site of the Work or in reading the plans or specifications.

v. A Bidder who claims a mistake or forfeits his/her bid security shall be prohibited from participating in further bidding on the project on which the mistake was claimed or security forfeited.

vii. **Return of Bid Guarantees.** After bids have been received and reviewed by the District, Bid Guarantees, except those submitted by the three lowest responsive, responsible Bidders, will be returned to the Bidders within 10 calendar days after the award of the contract. The Bid Guarantees of the three lowest responsive, responsible Bidders will be returned, except as noted otherwise in Section 7.4, "Failure to Execute Contract" of this Policy, within 10 calendar days after the successful Bidder has filed the specified bonds and proof of insurance and the Bidder and the District have executed a Contract.

viii. Regardless of their value, Public Works Construction Contracts for Work funded or financed with federal or state funds, pursuant to federal or state law requiring formal competitive bidding, shall be let by the formal competitive bidding procedures set forth above.

ix. **Execution of Contract.** A construction contract (long-form version) shall be used as the form of contract and must be approved by the General Manager. Two (2) copies of the contract must be wet signed by the successful Bidder and both wet-signed copies returned to the District, together with complete, certified copies of the Performance Bond, Payment Bond and certificates of insurance, within 10 calendar days of the Bidder's receipt of the construction contract documents. District Legal Counsel shall

review the contract and provide approval as to the contract's form. After legal counsel review, District staff shall prepare a staff report that identifies the availability of budgeted funds for the construction contract, and staff shall take the contract to the Board for approval authorizing the General Manager to execute the contract. Board approval may be by either adoption of a resolution or approval of a motion. Insurance certificates must be signed by a person authorized by the insurer to bind coverage on its behalf and must be accompanied by copies of all endorsements required by the contract. The District shall wet sign both copies of the contract and return one original, signed contract, with bonds and certificates of insurance to the contractor. **Change Orders.** For contracts valued more than \$100,000 but less than \$250,000, the General Manager may approve change orders or contract amendments that are less than 20% of the original contract. For contracts valued at more than \$250,000, the General Manager may approve change orders or contract amendments that are less than 10%. All change orders that exceed the set thresholds must be approved by the Board.

(3) *Public Works Construction Contracts using the DB or DAB method:* For Public Works Construction Contracts using the DB or DAB method, District staff shall use the following procedures:

- i. Solicit responses to a Request for Qualifications (RFQ) by written request (via fax, e-mail, or mail) from at least five (5) contractors;
- ii. Review the qualification statements with an Advisory Committee consisting of two (2) board members and key staff individuals. The Advisory Committee determines which contractors to solicit proposals from based on the criteria set forth in the RFQ;
- iii. Solicit responses to a Request for Proposals (RFP) from at least three (3) contractors based on item ii above. The RFP may request information at the District's option regarding each contractor's experience, the personnel to be assigned to the project, their approach to the construction, a preliminary construction schedule, their general conditions, their proposed fee for pre-construction services, and any comments on the District's construction contract agreement;
- iv. Review the proposals with the same Advisory Committee and determine which contractors to interview. Following the interviews, the Advisory Committee will determine the contractor with which it recommends negotiating a contract. The Advisory Committee shall make this recommendation to the Board for their approval;
- v. **Execution of Contract.** A construction contract tailored to fit the terms and conditions of the DB or DAB method shall be used. Two (2) copies of the contract must be wet signed by the successful contractor and both wet-

signed copies returned to the District, together with complete, certified copies of the Performance Bond, Payment Bond and certificates of insurance, within 10 calendar days of the contractor's receipt of the construction contract documents. District Legal Counsel shall review the contract and provide approval as to the contract's form. After legal counsel review, District staff shall prepare a staff report that identifies the availability of budgeted funds for the construction contract, and staff shall take the contract to the Board for approval authorizing the General Manager to execute the contract. Board approval may be by either adoption of a resolution or approval of a motion. Insurance certificates must be signed by a person authorized by the insurer to bind coverage on its behalf and must be accompanied by copies of all endorsements required by the contract. The District shall wet sign both copies of the contract and return one original, signed contract, with bonds and certificates of insurance to the contractor.

- vi. **Change Orders.** For contracts valued at less than \$100,000, the General Manager may approve change orders or contract amendments. Change orders more than 20% of the original contract must be reported to the Board at the next regular Board meeting. In the event that the change order and the original contract amount exceeds the General Managers signing authority of \$100,000, the change order must be approved by the Board. For contracts valued more than \$100,000 but less than \$250,000, the General Manager may approve change orders or contract amendments that are less than 20% of the original contract. For contracts valued at more than \$250,000, the General Manager may approve change orders or contract amendments that are less than 10%. All change orders that exceed the set thresholds must be approved by the Board.

(4) **Failure to Execute Contract.** If the Bidder/contractor to whom the contract is awarded fails to execute the contract and file the required bonds and insurance certificates within 10 calendar days from the time the contract forms are received by the Bidder/contractor, the award may be annulled and the Bidder's Bid Guarantee forfeited to the District up to the full amount. The contract may then be awarded to the next lowest responsive, responsible Bidder for the DBB method, or to another contractor selected by the Advisory Committee for the DB and DAB methods.

(5) **Performance and Payment Bonds.**

*i. For Contracts valued at less than \$100,000*

- 1. If the Total Contract Price exceeds \$25,000, any bidder to whom a contract is awarded shall execute and provide to District concurrently with the Contract a Payment Bond, equal to one hundred percent (100%) of the amount payable under the Contract

in a form provided or approved by the District. If such bonds are required, no payment will be made to Contractor until the bonds has been received and approved by the District.

2. Performance bonds are not required for contracts valued at less than \$100,000.

ii. *For Contracts valued at \$100,000 or more.*

1. Any bidder/contractor to whom a formal contract is awarded for any work shall supply on forms satisfactory to the District a Faithful Performance Bond in an amount equal to the total contract price, and a Laborer and Materialmen's Payment Bond in an amount equal to the total contract price. These bonds must be executed by an admitted surety, approved to conduct business in the State of California pursuant to California Code of Civil Procedure section 995.120. In addition to the extent required by law, the Bonds are to be accompanied by the documents required by Code of Civil Procedure section 995.660.
2. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is authorized by the State of California. Each bond shall be accompanied, upon request of District, with all documents required by California Code of Civil Procedure Section 995.660, to the extent required by law.

(6) **Insurance.**

- i. Before work commences under construction contract, the successful Bidder/contractor must provide the District proof of insurance in the form of a valid Certificate of Insurance. The successful Bidder's/contractor's insurance must meet all of the District's insurance requirements as specified in the construction contract, including naming the District as an additional insured. Insurance certificates must be signed by a person authorized by the insurer to bind coverage on its behalf and must be accompanied by copies of all endorsements.

(7) **Prequalification.**

- i. The General Manager or his/her designee is hereby authorized to prequalify bidders/contractors on District Work, if deemed appropriate by the General Manager. Bidders/contractors may only be prequalified on a project specific basis. The General Manager or his/her designee may designate one or more scoring systems consistent with the requirements of the Public Contract Code.



**(8) Exemptions from Competitive Bidding Procedure.**

- i. The competitive bidding procedure set forth above shall not apply for the following Work:
  - a. Force Account Work. Force Account Work shall mean work performed by District personnel, whether permanent or temporary.
  - b. Work Performed by a Utility or Public Entity. Work performed by a utility for the installation and/or relocation of utilities on behalf of the District or contracts for services with any public entity for plan check, inspection, or permitting.
  - c. When the service can be obtained from only one (1) source which has been reviewed and approved in writing by the General Manager and the District Board. Please refer to Section 8 of this policy.
  - d. In an emergency, defined as a situation where there is an immediate threat to life or property or where there is, or would be a disruption of a vital public service. Please refer to Section 9 of this policy.

**Section 8. Sole Source Procurement:**

(1) A sole source procurement is defined as any contract entered into without a competitive process, based on a justification that:

- i. Only one known source exists for supplies or services as determined by documented research; or
- ii. No other reasonable alternative source exists that meets the District's requirements; or
- iii. Only one source meets the business needs of the District (e.g., compatibility, unique feature to meet District's business need, etc.); or
- iv. An urgent need for the construction work will not permit a delay resulting from competitive solicitation.
  - i.

(2) When the service can be obtained from only one (1) source which has been reviewed and approved in writing by the General Manager for purchases up to \$100,000, or the Board for purchases costing more than \$100,000 or when in the judgment of the General Manager or Board, that compliance with the procurement procedures are not in the best interest of the District, the procurement must be accompanied by written justification. The justification may require the requestor to provide information such as:

- i. A description of the unique features that prohibit competition;
- ii. Documented research conducted to verify the contractor as the only known source;
- iii. A description of the marketplace to include distributors, contractors, etc.;
- iv. Known compatibility issues; and/or
- v. Timing issues.

**Section 9. Emergency Procurements**

- (1) In an emergency, defined as a situation where there is an immediate threat to life or property or where there is, or would be, a disruption of a vital public service;
- (2) An emergency procurement must be approved verbally by the General Manager or, if he/she is not available, by other management personnel. When an emergency procurement is made, the purchase order for the transaction shall be prepared and approved the next working day (according to the procedures described above). Any such purchase order shall include documentation certifying the emergency.
- (3) For emergency procurement exceeding \$100,000, a full accounting of such emergency expenditures by the General Manager will be reported to the Board at the next regular board meeting and the budget and/or reserve adjustment recommendation of the General Manager will be presented to the Board for discussion and approval.