

1 **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

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3 **RESOLUTION NO. 2012-**

4
5 **A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER**
6 **MANAGEMENT DISTRICT AMENDING CHAPTER 155 OF THE DISTRICT POLICIES**
7 **CODE, TO REDUCE THE DOLLAR THRESHOLDS OF ACTIONS REQUIRING**
8 **FORMAL COMPETITIVE SOLICITATION, COMBINE SPECIAL PROCUREMENTS**
9 **AND EXCEPTIONS TO COMPETITIVE REQUIREMENTS INTO ONE SECTION,**
10 **PROVIDE A NEW SECTION TITLED EMERGENCY PROCUREMENT, AND**
11 **REFORMAT THROUGHOUT FOR CONSISTENCY; PROVIDING FOR INCLUSION IN**
12 **THE DISTRICT POLICIES CODE; PROVIDING FOR SEVERABILITY; PROVIDING**
13 **AN EFFECTIVE DATE. (DOROTHY BRADSHAW, EXT. 2823)**

14
15 **WHEREAS** the Governing Board of the South Florida Water Management
16 District has determined that it is necessary, appropriate and in the public interest to
17 make certain revisions to the District’s procurement policies to reduce the dollar
18 thresholds of actions requiring formal competitive solicitation, combine special
19 procurements and exceptions to competitive requirements into one section, provide a
20 new section titled emergency procurement, revise the transactions identified as
21 requiring governing board approval, and reformat for consistency; now therefore

22 **BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA**
23 **WATER MANAGEMENT DISTRICT:**

24 **Section 1.** The Governing Board adopts the following amendments to Section 155 of
25 the District Policies Code:

26 **CHAPTER 155 PROCUREMENT AND CONTRACTING**

27 Chapter 155 PROCUREMENT AND CONTRACTING*

- 28
29 Sec. 155-1. Scope.
30 Sec. 155-2. Purpose.
31 Sec. 155-3. Effective Date.
32 Sec. 155-4. Statements of Policy.
33 Sec. 155-5. Competitive Procurements Methods.
34 Sec. 155-6. Exceptions to Competitive ~~Procurements~~ Solicitations.
35 Sec. 155-7. ~~Special~~ Emergency Procurements.
36 Sec. 155-8. Transactions Requiring Governing Board Approval.

38 Sec. 155-1. Scope.

39 The scope of this policy and the supporting documents listed in this section shall apply to all
40 District purchasing and contracting activities authorized by the Governing Board. Purchasing and
41 contracting activities not covered by this policy are listed below:

42 (1) Transactions involving real estate interests governed by Sections 373.089 and 373.139,
43 Florida Statutes, and/or by Chapters 40E-7 and 40E-9, Florida Administrative Code.

44 (2) Reimbursement for purchases of selected small items, which are covered under the Petty
45 Cash Policy and Disbursement Policy, Chapter 210, *Finance*, District Policies and Procedures
46 Code.

47 (3) Regulated item purchases, which are covered under the Disbursement Policy, Chapter 210,
48 *Finance*, District Policies and Procedures Code.

49 (4) Disposal of surplus property, which is governed by Chapter 274, Florida Statutes and the
50 Fixed Assets Policy, Chapter 210, *Finance*, District Policies and Procedures Code.

51 (5) Transactions involving Procurement Card purchases, which are covered under Chapter 255,
52 Procurement and Contracting, District Policies and Procedures Code.

53 (6) Travel Services, which are covered under Chapter 101, District Policies and Procedures
54 Code.

55 (7) Leases of District land shall be administered ~~as in accordance with the procedures~~ set forth
56 under Chapter 140, District Policies and Procedures Code.

57 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006)

58
59 Sec. 155-2. Purpose.

60 (a1) The purpose of this policy is to provide an efficient, effective, economical and equitable
61 means of procuring needed commodities, equipment and services.

62 (b2) This policy incorporates the provisions of Chapter 40E-7, Florida Administrative Code,
63 and the provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation
64 Act (CCNA).

65 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006)

66
67 Sec. 155-3. Effective Date.

68 (a) ~~This policy, as revised, is effective on October 15, 2004.~~

69 (b1) All transactions not initiated as of the effective date shall be subject to the provisions of
70 this revised policy for the entire process of competition (as applicable), transaction authority and
71 execution authority.

72 ~~(c) Transactions already in process as of the effective date shall be subject to the provisions of~~
73 ~~this revised policy only for those transaction phases (competition, transaction authority and~~
74 ~~execution authority) which have not yet commenced. Phases, which have already commenced as~~
75 ~~of the effective date of this policy, shall be subject to the provisions of the policy in effect at the~~
76 ~~time of phase commencement.~~

77 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-
78 2006)

79
80 Sec. 155-4. Statements of Policy.

81 The following policy statements govern the procurement of all commodities, equipment and
82 services by the District:

83 (1) The District embraces diversity and is committed to ensuring that the District's vendors
84 reflect the full diversity of the communities we serve.

85 (2) The District shall follow generally accepted public procurement practices, and to the extent
86 practicable and applicable, implement the legislative intent of Section 287.001, Florida Statutes.

87 (3) The District shall conduct contract negotiations in a manner that ensures that the District

88 receives fair value for its money, and that vendors and contractors receive fair compensation for
89 their commodities, equipment and services.

90 (4) The District shall actively encourage the participation of certified Small Business
91 Enterprises in the procurement process in accordance with Chapter 40E-7, Part VI, Florida
92 Administrative Code, the "Small Business Enterprise Contracting Rule." The purpose of the
93 program is to spur economic development and support small businesses, including women-
94 owned and minority-owned businesses to successfully encourage expansion in the marketplace.

95 (5) District employees shall refrain from making representations or entering into any oral
96 agreements unless they have delegated procurement authority.

97 (6) District employees shall neither solicit nor accept privileges, benefits, gifts or exemptions
98 for themselves or for others and shall adhere to the Code of Ethics for Public Officers and
99 Employees Part III, Chapter 112, Florida Statutes.

100 (7) District solicitations are valid as the basis of a contract for a period of one year from the
101 date of solicitation opening. ~~After this period, new solicitations for the same commodities,~~
102 ~~equipment or services must be issued.~~

103 (8) The dollar amount required for the procurement of particular commodities, equipment or
104 services from one source shall not be intentionally divided among two or more procurements as a
105 means of avoiding competition requirements.

106 (9) Pursuant to Rule 40E-7, Part II, Florida Administrative Code., the District's Governing
107 Board may temporarily or permanently suspend contractors from doing business with the District
108 whenever a contractor materially breaches its contract with the District.

109 (10) The District may utilize the Design-Build method of procurement for construction. The
110 process for selecting the design-build firm shall, at a minimum, include the components listed in
111 Section 287.055, F.S.

112 (11) Professional services are subject to the requirements of the Consultants' Competitive
113 Negotiation Act (CCNA), Section 287.055, Florida Statutes. These requirements involve the
114 services of architects, professional engineers, landscape architects and registered land surveyors
115 and mappers. Threshold amounts are set under Section 287.017, Florida Statutes, and are subject
116 to revision. The District will adhere to any revised threshold amounts.

117 Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006;
118 Res. No. 2007-327, § 1, 3-15-2007)

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120 Sec. 155-5. Competitive Procurement-Methods.

121 ~~(a)~~ The following competition ~~methods and thresholds standards~~ govern District procurements
122 and shall be ~~implemented made~~ according to procedures outlined in the Procurement Procedure
123 Manual. Note that all dollar thresholds refer to the "total procurement amount," which is defined
124 as the full amount of the individual transaction regardless of the cost of each item procured.

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Competition Methods

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128 (1) Verbal or Written Requests for Quote

129 (2) Requests for Bids

130 (3) Requests for Proposals

131 (a) Design-Build

132 (4) Request for Information or Request for Qualifications

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Competition Thresholds

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Commodities and Contractual Services

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<i>No Competition Required</i>	<i>Verbal Quotes</i>	<i>Written Quotes (RFQ) Min. of 3 Required</i>	<i>Formal Competition</i>
< or = \$50,000.00 <u>\$10,000</u>	> <u>\$10,000 to \$50,000</u>	> \$50,000.00 to \$150,000.00 > <u>\$50,000 to \$100,000</u>	> \$150,000.00 > <u>\$100,000</u>

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Construction Procurements

<i>No Competition Required</i>	<i>Written Quotes (RFQ) Min. of 3 Required</i>	<i>Formal Competition</i>
< or = \$50,000.00 Verbal Quotes Highly Desirable	> \$50,000.00 to \$200,000.00	> \$200,000.00

140 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006;
141 Res. No. 2007-327, § 1, 3-15-2007)

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Sec. 155-6. Exceptions to Competitive Procurements Solicitation.

~~Circumstances that permit noncompetitive procurement may include but are not limited to:~~

The following services or commodities are not subject to competitive solicitation as set forth in Chapter 287.057, Florida Statutes, and District policy: (1) Contractual Services or commodities needed for:

- a. (1) Artistic services;
- b. (2) Lectures by individuals;
- e. (3) Auditing services;
- e. (4) Legal services, including attorney, paralegal, expert witness, appraisal, court reporting, mediator, arbitrator, or dispute resolution services;
- (5) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
- (6) Services or commodities provided between government agencies;
- (7) Commodities or contractual services available only from a single source (*must follow District Procurement Procedures for sole source procurements and waivers of competition*);
- (8) Commodities and contractual services from purchasing agreements/contracts established by other government agencies, if that contract was based on a competitive proposals, bid or quote and form state term contracts procured by the Department of Management Services, pursuant to Section 187.057, Florida Statutes;. This method of procurement is not subject to protest under 120.57(3), Florida Statutes;
- (9) If less than two responsive bids, proposals, or replies for commodity or contractual services purchasing are received, the District may negotiate on the best terms and conditions. The District shall document the reasons that such action is in the best interest of the District in lieu of re-soliciting competitive sealed bids, proposals or replies;
- (10) Office space leases less than 5,000 square feet in privately owned buildings for District purposes;
- (11) Away-from-base or unscheduled or emergency aircraft services/repairs in order to keep the aircraft airworthy and operational (*pilot to use most practicable local procurement*);
- (12) Licensing, warranty, compatibility requirements that limit the selection to the manufacturer, including purchases of parts, repairs, or maintenance services for field equipment from the original equipment manufacturer, seller, or authorized repair facility (e.g. pumps generators, and specialized field equipment);

- 175 (13) Insurance in abnormal market conditions (*determined by Executive Director*);
176 (14) Services or commodities required from entities which are prohibited from competing by
177 law (e.g., utilities);
178 (15) Services or commodities where the state or federal law prescribes with whom the agency
179 must contract or if the rate of payment is established funding in the appropriations process;
180 (16) Renewals for maintenance and licensing of proprietary computer software;
181 (17) Services from Universities and colleges, including community colleges, for research,
182 studies or training, unless more than one institution can provide comparable products or services.
183

184 Sec. 155-7 Emergency Procurement

185 Under *emergency* circumstances, an agreement may be executed without competitive selection
186 as follows:

187 a. (1) if the Executive Director or the Executive Director's delegate determines that the
188 procurement of services without competition is necessitated in order to respond to an immediate
189 danger to the public health, safety, welfare or other substantial loss to the public, the Executive
190 Director or the Executive Director's delegate may proceed with such procurement accordingly.
191 However, such procurement shall not exceed the amount of \$500,000.00. The need for such
192 procurement without competition shall be evidenced in writing. In order to make procurement of
193 services in an amount greater than \$500,000.00, the Governing Board must make a determination
194 that emergency conditions exist. All procurements made pursuant to this paragraph shall be
195 reported to the Governing Board within 30 days.

196 b. (2) Whenever the President of the United States, or the Governor of the State of Florida, or
197 the head of the Department of Environmental Protection shall formally declare that a major
198 disaster area exists anywhere within the boundaries of the District, or issues an emergency order
199 temporarily suspending the application of any specified laws otherwise applicable to the
200 operations of the District, then the Executive Director of the District shall have the authority to
201 undertake all such actions, without competition, regarding the procurement of commodities,
202 equipment and services so required to deal with the emergency conditions up to the next meeting
203 of the Governing Board notwithstanding that such authority resides in the Governing Board. At
204 the next Governing Board meeting, the Board shall determine if the further emergency
205 procurement of commodities, equipment and services is still required. However, all emergency
206 procurements shall be made with such competition as is practicable under the circumstances. The
207 Executive Director shall report to the Governing Board all actions taken pursuant to this
208 exception within 30 days.

209 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006)
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211 ~~Sec. 155-7. Special Procurements.~~

212 ~~Alternative competitive procurements authorized by the District include:~~

213 ~~(1) The District may purchase commodities and contractual services from purchasing~~
214 ~~agreements established and state term contract procured by the Department of Management~~
215 ~~Services, pursuant to Section 287.057, Florida Statutes.~~

216 ~~(2) The District may use a request for quote to obtain written pricing or services information~~
217 ~~from a state term contract vendor for commodities or contractual services available on state term~~
218 ~~contract from the vendor. The purpose of a request for quote is to determine whether a price,~~
219 ~~term, or condition more favorable to the agency or eligible user than that provide in the state~~
220 ~~term contract is available. Use of a request for quote does not constitute a decision or intended~~
221 ~~decision that is subject to protest under 120.57(3), Florida Statutes.~~

222 ~~(3) If less than two responsive bids, proposals, or replies for commodity or contractual services~~
223 ~~purchases are received, the District may negotiate on the best terms and conditions. The District~~
224 ~~shall document the reasons that such action is in the best interest of the District in lieu of~~

225 ~~resoliciting competitive sealed bids, proposals or replies.~~
 226 ~~(4) The District may purchase from a contract awarded by another government agency, if that~~
 227 ~~contract was based on either a competitive bid, a competitive proposal or a competitive sealed~~
 228 ~~reply.~~
 229 ~~(Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006)~~

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 231 Sec. 155-8. Transactions Requiring Governing Board Approval.

232 The following commodities and services require Governing Board approval:

233 (a1) Commodities in excess of the Division/Program approved annual District budget ~~by~~
 234 ~~appropriation unit.~~

235 (b2) Single award to a single vendor for one or more of the same commodity or one or more
 236 pieces of equipment with a total combined value exceeding \$1,000,000.00 even if such
 237 commodities or equipment have been approved as part of the annual District budget.

238 (c3) Unbudgeted services, commodities or equipment funded from capital outlay savings in
 239 excess of the amounts specified in the table below.

240 (d4) Transactions consisting of both commodities (or equipment) and services require
 241 Governing Board approval if the services dollar amount exceeds the thresholds noted in the table
 242 below, ~~and/or thresholds relating to (a) or (b) above (commodities and/or equipment) are~~
 243 ~~exceeded.~~

244 (e) ~~Agricultural Land Leases refer to Chapter 140, District Policies, for administration.~~

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 246 Dollar Thresholds by category for a total award shall apply as follows:

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 248 Table of Governing Board Thresholds

> \$150,000.00	> \$500,000.00	> \$500,000.00	> \$1,000,000.00
Commodities & Contractual Services Including: <ul style="list-style-type: none"> • Waivers of Competition • Exceptions to Competition 	Construction Procurements (Services and Materials)	Emergency Procurements (Services, Commodities and/or Equipment)	Single vendor/single award of one or more of the same commodity or equipment
<ul style="list-style-type: none"> • CCNA Procurements 	Construction Change Orders (threshold applies to aggregate amount) (Services and Materials)		
	<u>Emergency Procurements</u>		
<ul style="list-style-type: none"> • Special Procurements 			
<ul style="list-style-type: none"> • Lease Agreements 			

250 (Res. No. 2003-867, 8-13-2003; Res. No. 2004-1081, 10-13-2004; Res. No. 2006-820, 8-9-2006;
 251 Res. No. 2007-327, § 1, 3-15-2007)

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Section 2. Inclusion of Section 1 of this resolution in the District Policies Code is authorized and directed.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this resolution is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this resolution.

Section 4. This resolution shall take effect immediately on adoption.

PASSED and **ADOPTED** this ____ day of _____, 2012.

**SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD**

By:

Chairman

ATTEST

District Clerk

Approved as to form:

BY: _____

Office of Counsel