

## ORDINANCE O2015-02

### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE RANCHO MURIETA COMMUNITY SERVICES DISTRICT AMENDING DISTRICT CODE CHAPTER 4, PURCHASING AND BIDDING PROCEDURES

The Board of Directors of the Rancho Murieta Community Services District hereby ordains as follows:

**Section 1. Purpose and Authority.** The purpose of this ordinance is to revise and clarify the District's policies, procedures and bidding regulations governing purchases of supplies, materials, equipment and personal services and public works contracting by the District as currently set forth in chapter 4 (Purchasing and Bidding) of the District Code and District Policy No. 2009-03 (Procedures for Bidding, Construction and Acceptance of District Public Works). This ordinance is adopted pursuant to Government Code sections 61060, 61063, Public Contract Code section 22050, and other applicable law.

**Section 2. Amendment.** Chapter 4 of the District Code is hereby amended to read as follows:

#### Section 1.00 General Provisions

1.01 Purpose: The purpose of this Code is to establish efficient procedures for the purchase of supplies, materials, equipment, and services, and for letting construction contracts consistent with state law.

1.02 Administration of Code: The General Manager shall administer the regulations contained in this Chapter and shall take steps as are reasonable and proper to ensure compliance with this Chapter.

1.03 Additional Procedures: The General Manager may establish and maintain administrative regulations and standards that implement the provisions of this Chapter, including, but not limited to:

- a. Procedures for inspecting deliveries of supplies, materials and equipment and for evaluating the provision of general or professional services;
- b. Procedures for submitting requisitions for supplies, materials, equipment, and services by District employees; and
- c. Procedures for the control and safeguarding of District supplies, materials, and equipment and the maintenance of an inventory system for such supplies, materials, and equipment.

The General Manager shall submit the proposed administrative regulations to the Board for approval, and, if approved, shall thereafter carry out and enforce such regulations and standards.

1.04 Bulk Orders: When practicable, the General Manager shall seek to reduce the number of purchasing transactions for commonly used or purchased materials, supplies, and equipment by combining them into bulk orders.

- 1.05 Purchases by the Department of General Services. As appropriate, the Office of Procurement, California Department of General Services, may purchase miscellaneous equipment and supplies for the District as authorized by state law. The General Manager may sign and deliver all necessary requests and other documents in connection with such purchases.

## **Section 2.00 Definitions**

As used in this Chapter, the following words and phrases shall have the following meaning:

- 2.01 Bidder's List: List of prospective suppliers, vendors and qualified contractors capable of providing the commodity or service being bid upon, maintained by the General Manager.
- 2.02 Board: Board of Directors of the Rancho Murieta Community Services District.
- 2.03 Commodity: Supplies, materials, equipment, and other tangible personal property appropriate for the reasonable operation of the District.
- 2.04 Competitive Bidding: The formal or informal submission, or receipt, of verbal or written estimates or cost proposals in terms of dollars, man days of work required, percentage of construction cost, or any other measure of compensation whereby the District may compare prices and other relevant criteria. The competitive bidding process typically involves the submission of offers by bidders pursuant to a public notice inviting bidders to provide the District with a specified commodity or service, or to purchase District personal property which has been found by the Board not to be required for public use, and which offers are submitted under seal or by voice at a public auction.
- 2.05 Construction Contract: Public works contract for the construction or completion of any building, structure or improvement, or a contract for the furnishing of materials and supplies for such work that is subject to the regulations contained in Public Contract Code sections 20680 to 20683.
- 2.06 District: Rancho Murieta Community Services District.
- 2.07 Force Account: Any work performed by District employees, or day's labor under District supervision or superintendence.
- 2.08 General Services: Services that do not require any unique skill, special background, or training and involve routine, recurring, and usual work for the continued operation and maintenance of the District. General services include the provision of telephone, gas, water, electric, light and power services and rentals of equipment and machinery.
- 2.09 Open Market: Purchase of a Commodity or services that does not require the solicitation of competitive sealed bids for awarding to the lowest responsible bidder.
- 2.10 Professional Services: Services performed by an attorney, physician, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm,

computer or information technology consultant, or other consultant or organization possessing a high degree of technical and professional skills and that require specific skills, experience and training, and professional judgment.

### **Section 3.00 General Manager Authority**

3.01 Powers and Duties of General Manager: The General Manager shall, under the direction of the Board and in compliance with the provisions of this Chapter and applicable state law:

- a. Purchase or contract for all Commodities, construction work, or General and Professional Services required by the District in amounts or estimated amounts of up to \$25,000 or less and sign such contracts.
- b. Submit to the Board, for review and approval, all Construction Contracts and contracts for the purchase of Commodities or retention of General or Professional Services in amounts or estimated amounts exceeding \$25,000. After approval by the Board, the General Manager may sign such contracts on the District's behalf.
- c. Dispose of property pursuant to Section 8.
- d. In consultation with District counsel, develop standard forms and specifications for invitations to bid and related bid documents, purchase orders, Construction Contracts, and contracts for General or Professional Services, and prescribe the use of other forms and procedures as may be required to carry out the provisions of this Chapter.
- e. Supervise the inspection of all Commodities and services purchased under this Chapter to assure conformance with District specifications.
- f. Maintain up-to-date Bidder's List, vendor's catalogs, files, and such other records as needed to perform these duties.
- g. Ensure that purchasing specifications are written to encourage full competition.
- h. Perform such other tasks as may be necessary or appropriate to administer the provisions of this Chapter.

3.02 Delegation of Responsibility: The General Manager may delegate the duties and responsibilities assigned by this Chapter to his or her designee, as the General Manager deems proper.

### **Section 4.00 Emergency Purchases and Contracting**

4.01 Determination of Emergency: The authority to declare the existence of an emergency, including but not limited to emergencies described in Government Code sections 8558 and 54956.5 and Public Contract Code section 1102, generally resides with the Board. When urgent circumstances preclude taking the time for such determination by the

Board, the General Manager may declare the existence of an emergency subject to ratification of the Board at its next Board meeting.

4.02 Authority of General Manager: In cases of emergency as determined by the Board or General Manager as set forth in Section 4.01 above, when repair or replacements are necessary to permit the continued operation of the District, or to avoid danger to life or property, the General Manager may replace or repair any District building, structure, equipment or facility, purchase or contract for the necessary Commodities and General or Professional Services, and take any other related and immediate action necessary or appropriate to respond to the emergency without complying with the Competitive Bidding requirements in Section 6 of this Chapter.

4.03 Delegation of Authority by General Manager: If the General Manager is unavailable to take the actions described in Section 4.02 above, the department or division supervisor or acting supervisor in need of emergency Commodities or General or Professional Services may make the necessary purchases, securing competitive quotations whenever possible. The supervisor may issue a verbal order to a vendor as necessary to resolve the immediate hazard. The supervisor must notify the General Manager of his or her actions as soon as reasonably possible.

4.04 Board Notification and Approval: The General Manager shall promptly report to the Board the emergency actions taken and the circumstances surrounding such emergency.

If the General Manager approves a Construction Contract without giving public notice for bids where it would normally be required, he or she shall inform the Board of Directors no later than seven days after the action, or at the Board's next regularly scheduled meeting, if that meeting will occur no later than 14 days after the action, and every regularly scheduled Board meeting thereafter until such emergency action is terminated. Following notice to the Board by the General Manager, the Board must decide whether to approve, by a four-fifths vote, the continuation of such emergency work. If the Board does not allow the emergency action to continue, the General Manager shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice inviting bids for the emergency work.

4.05 Delegation of Emergency Construction Contract Authority: Pursuant to Public Resources Code section 22050(b)(1), the Board delegates to the General Manager the authority to order emergency Construction Contract action under Public Contract Code section 22050(a).

## **Section 5.00 Commodities, General Services and Construction Contracts of \$25,000 or Less**

5.01 Commodities and General Services: For a purchase of Commodities or contract for General Services in an amount or estimated amount of \$25,000 or less, the General Manager may make the purchase or approve the contract on the Open Market by seeking the most favorable terms and price either through negotiation, comparative

pricing or informal Competitive Bidding, whichever method the General Manager deems most appropriate in the circumstances.

- 5.02 Construction Contracts: The General Manager may approve a Construction Contract without Competitive Bidding when the cost of such work does not exceed \$25,000. The General Manager shall seek the most favorable terms and price through negotiation, comparative pricing or informal Competitive Bidding as the General Manager deems most appropriate in the circumstances.

Alternatively, the District may perform the construction, reconstruction, erection, alteration, renovation, improvement, or repair of any building, structure, or facility owned, leased, or operated by the District by Force Account.

- 5.03 Availability of Funds: The General Manager may authorize a purchase or contract under Section 5.01 or 5.02 above only if there are unexpended funds available in the District budget for the purchase or to pay the costs of such contract. If there are no unexpended funds within the approved District budget, then the purchase or contract must be authorized by the Board.

- 5.04 Change Orders and Contract Amendments: The General Manager may negotiate, approve and sign change orders and contract amendments, provided the sum of all amendments does not exceed the approved contingency amount for that specific contract. Any change order or contract amendment that exceeds the approved contingency amount shall require Board approval.

## **Section 6.00 Commodities, General Services and Construction Contracts in Excess of \$25,000**

- 6.01 Competitive Bidding Required: A purchase of Commodities, a contract for General Services, or a Construction Contract in an amount or estimated amount exceeding \$25,000 shall be made pursuant to the Competitive Bidding requirements set forth in this Section 6, unless one of the following exceptions applies:

- a. Commodities or General Services can be obtained from only one vendor, manufacturer, distributor, or service provider as described in Section 6.06 below;
- b. Purchases made through the California Department of General Services;
- c. Emergency purchases or work as described in Section 4 of this Chapter;
- d. For Commodities or General Services, the General Manager determines that Competitive Bidding would not be advantageous or in the best interests of the District and recommends a single vendor/provider purchase or contract to the Board for approval; or
- e. For Commodities or General Services, the Board determines or directs otherwise.

6.02 Bidding Procedures: The bidding procedures are as follows:

- a. Notice Inviting Bids: The General Manager, or his or her designee, shall prepare a notice inviting bids for the purchase or contract that includes a general description of the supplies, materials, equipment to be purchased (including, if appropriate, bid specifications) or the General Service or construction work to be performed, the deadline for receipt of sealed bids, and the time and place for the bid opening.
- b. Publication of Notice: For Commodities and General Services, the notice inviting bids shall be posted in three public places in the District, distributed to prospective suppliers, vendors, and contractors on the Bidder's List, and otherwise distributed as the General Manager deems appropriate. For Construction Contracts, the notice inviting bids shall be published as required by Public Contract Code section 20682 or 20682.5.
- c. Bid Security: When the General Manager deems appropriate, a bidder's security may be required for the purchase of Commodities and General Services in a form and amount as determined by the General Manager. If a bidder's security is required, the bidder security requirement shall be set forth in the notice inviting bids. Bids that are delivered without the required bid security shall not be considered by the District.

All bids for Construction Contracts must be sealed and be accompanied by a bidder's security as required by Public Contract Code section 20683.

- d. Bid Opening: At the time and place for the bid opening, the bids shall be opened in public. The General Manager shall tabulate all bids received and keep them open for public inspection for a period of not less than 30 calendar days after the bid opening. At the next Board meeting following the opening of bids, the General Manager shall present the bids to the Board.
- e. Lowest Responsible Bidder: The District will only consider bidders who submit a complete and fully responsive bid. The General Manager shall make a recommendation to the Board on an award to the lowest responsible responsive bidder. In its discretion, the Board may award the contract to the lowest responsible responsive bidder, reject all bids and re-advertise for bids, or reject all bids and not proceed with the purchase or contract. Additionally, for Commodities and General Services, the Board may reject all bids and direct that an Open Market purchase be made, provided the price paid on the Open Market shall not exceed the bid of the lowest responsible responsive bidder. The Board may waive any irregularity or informality in any bid.

In determining the lowest responsible responsive bidder, price alone shall not be the determinative factor, but shall be considered along with other factors including, but not limited to, the ability of the bidder to deliver or perform the work, availability of the Commodities or services required, prior work experience, location of the vendor or service provider, and any other factors relating to the



particular needs of the District for the Commodities to be purchased or the General Services or construction work required.

Upon an award to the lowest responsible responsive bidder, the security of an unsuccessful bidder, if any, shall be returned within a reasonable amount of time, but in no event shall the District hold the security beyond 60 days from the time the award is made.

6.03 Forfeiture of Bid Security: Upon award to the lowest responsible responsive bidder, if the successful bidder fails to proceed with the sale to the District or enter into a contract with the District within 10 days from the date of the award, the bidder shall forfeit the bid security.

6.04 Bid Protests: Any bid protest from an unsuccessful bidder must be submitted in writing to the District by the seventh day following the date of award. A "bid protest" means any protest, objection, complaint, or challenge to, concerning or against (i) a rejection of a bidder for any reason; (ii) a contract award to the apparent low bidder; (iii) another bidder's bid; or (iv) the legality or enforceability of the bid documents or contract documents or process. The bidder filing the protest must have actually submitted a bid for the purchase or contract. The protest shall be in the form of a letter or memorandum to the General Manager and shall include the following: (i) a complete statement of the basis or bases for the protest, including supporting documents; (ii) a reference to the specific portion(s) of the contract or bid documents that form(s) the basis of the protest; and (iii) the name, address, and telephone number of the person representing the protesting bidder.

The bidder filing the protest shall concurrently transmit a copy of the protest document and any attached documentation to all other bidders with a direct financial interest who may be adversely affected by the outcome of the protest, including all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The Board shall issue a prompt decision on the protest. If the Board determines that a protest is frivolous, the bidder submitting the protest may be determined to be irresponsible and be deemed ineligible for future contract awards as described in Section 6.05 below.

The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. Failure to timely comply with these procedures will constitute a waiver of any right to further pursue the bid protest, including filing a petition for writ of mandate, Government Claims Act claim, or other lawsuit or legal proceeding.

6.05 Rejection of Irresponsible Bidder: The General Manager may declare a bidder to be irresponsible for the following reasons:

- a. Failure to furnish satisfactory proof of responsibility when requested by the District;

- b. Unsatisfactory delay in the performance of a contract or purchase order;
- c. Unsatisfactory performance of a contract or purchase order;
- d. Submittal of a frivolous bid protest as described in Section 6.04 above; or
- e. Violations or attempted violations of this Chapter.

Once a bidder has been determined to be irresponsible, the General Manager may remove the bidder from the Bidder's List and deem the bidder to be ineligible for future contract awards for a reasonable period of time as determined by the General Manager. The barred bidder shall be furnished with a written notice explaining the reasons for the irresponsibility determination, and may appeal such decision to the Board within 10 days of receiving the notice.

6.06 Single Vendor or Provider Purchases: When the District requires Commodities or General Services that can be obtained or purchased from only one vendor, manufacturer, distributor authorized to sell within the District, or service provider, the General Manager may conduct negotiations with such vendor, manufacturer, distributor, or service provider to secure the most favorable terms and price without complying with the requirements of Sections 6.01 and 6.02 above. All single vendor/provider purchases shall be supported by written documentation indicating the facts and nature supporting the determination that the single vendor/provider purchase is appropriate in the circumstances. All single vendor/provider purchases in an amount or estimated amount exceeding \$25,000 require Board approval.

6.07 Special Commodities: When the District requires special supplies, materials, or equipment that must be compatible with existing District equipment, or that must perform complex or unique functions, or that are otherwise patented or proprietary, the General Manager, in consultation with the department or division supervisor, may limit bidding to a specific product type or brand name product.

Bidders who submit alternative products or brand names are responsible for demonstrating, to the District's satisfaction, that the proposed alternative product is equal in quality and performance to those specified in the bid documents.

6.08 Splitting of Transactions Unlawful: The District shall not split requirements for Commodities, General Services, and Construction Contracts into amounts or estimated amounts of less than \$25,000 to avoid the provisions of this Section 6.

## **Section 7.00 Contracts for Professional Services**

7.01 Factors to Consider: A Professional Services contract shall be awarded only to firms and persons who have demonstrated an adequate level of experience, competence, training, credentials, character, integrity, reputation, financial responsibility, resources, equipment, staffing, and other professional qualifications necessary to competently perform the services required by the District in the time period and price stated. The



cost of service shall not be the determinative factor, as it may be in the District's best interest to award the Professional Services contract to a higher-priced consultant based on the scope of services, availability, unique skills, staffing levels, timing, prior experience, familiarity with District operations, and other information as determined by the District. The information required for determining the qualifications for providing the District with such services shall be developed by the department or division supervisor requiring the professional services, in consultation with the General Manager.

When selecting an architectural, landscape architectural, engineering, and environmental, land surveying, or construction project management firm, the selection will be based on the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required services in accordance with Government Code section 4526.

- 7.02 Contracts for \$25,000 or Less: For Professional Service contracts in an amount or estimated amount of \$25,000 or less, the General Manager may negotiate, approve and sign the Professional Services contract through negotiation, comparative pricing or informal Competitive Bidding, whichever method the General Manager deems most appropriate in the circumstances.

The General Manager may approve the contract only if there are unexpended funds available in the District budget to pay the costs of the Professional Services contract. If there are no unexpended funds within the approved District budget, then the contract must be authorized by the Board.

- 7.03 Contracts Exceeding \$25,000: A contract for Professional Services in an amount or estimated amount exceeding \$25,000 shall be made pursuant to the solicitation procedures as follows:

- a. Request for Proposal/Qualifications: The General Manager, or his or her designee, shall prepare a request for proposal/qualifications ("RFP/Q") that describes the Professional Services needed, the required minimum qualifications, any required pre-proposal conferences, the requirement that the proposal be sealed, the deadline for submitting the proposal/qualifications, and the place and time for making the submission.
- b. Selection of Consultant: The General Manager, in consultation with the department or division supervisor requiring the Professional Services, shall review all proposals received in compliance with the RFP/Q requirements and may conduct follow-up interviews with the most qualified consultants. The proposals need not be opened in public. At the next Board meeting following the opening of proposals, the General Manager shall present the proposals to the Board.
- c. Award of Contract: The General Manager shall make a recommendation to the Board on an award to the most qualified proposal based on the factors described in Section 7.01 above. In lieu of the RFP/Q process, if the General Manager determines that the process would not be advantageous or in the best interests of

the District, the General Manager may recommend a sole source Professional Services contract to the Board. In its discretion, the Board may award the contract to the person or firm recommended by the General Manager or, if applicable, another proposer, reject all proposals and re-solicit proposals, reject all proposals and not proceed with the contract, or reject all proposals and direct that the General Manager solicit and negotiate a contract with a specific person or firm.

- 7.04 Contract Amendments: The General Manager may negotiate and execute Professional Services contract amendments, provided the sum of all amendments does not exceed the approved contingency amount for that specific contract. Any contract amendment that, in addition to the approved contingency amount shall require Board approval.

#### **Section 8.00 Disposal of District Property**

- 8.01 Disposal of Surplus Real Property: The General Manager shall dispose of real property that the Board has determined to be no longer necessary for the District's use in compliance with the requirements set forth in Government Code sections 54220 through 54233 and as otherwise directed by the Board.

- 8.02 Disposal of Surplus Personal Property: This section applies to surplus personal property, which is personal property owned by the District that the Board has declared surplus as inadequate or no longer necessary for the needs of the District. The General Manager may sell surplus personal property, or trade-in surplus personal property, as the Manager deems in the best interests of the District. The General Manager may discard or dispose of unsalable surplus personal property in any appropriate manner. The General Manager may also discard or destroy surplus personal property in any appropriate manner that may have some resale value but where, because of safety or liability concerns, destruction or disposal is preferable to sale.

**Section 3. Supersede.** This ordinance supersedes existing District Code chapter 4, the ordinances that adopted and amended chapter 4, District Policy No. 2009-03, and all prior inconsistent District ordinances, resolutions, policies, rules, and regulations concerning the subject matter of this ordinance.

**Section 4. Effective Date.** This Ordinance shall take effect 30 days after its adoption.

**Section 5. Severability.** If any section or provision of this Ordinance or the application of it to any person, transaction or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Ordinance that can be given effect without the invalid or unenforceable provision, and to this end the provisions of this Ordinance are declared to be severable.

**Section 6. Publication.** The District Secretary is directed to prepare and publish a summary of this ordinance once, with the names of the members voting for and against the ordinance, in a newspaper published in the District within 15 days after the adoption of this ordinance.

**INTRODUCED** by the Board of Directors on the 15<sup>th</sup> day of July, 2015.

**PASSED AND ADOPTED** by the Board of Directors of the Rancho Murieta Community Services District at a regular meeting on the 19<sup>th</sup> day of August, 2015 by the following 4/5ths roll call vote:

AYES: Pasek, Ferraro, Gumbinger, Martel, Pecotich  
NOES: None  
ABSENT: None  
ABSTAIN: None



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Gerald Pasek  
President, Board of Directors

Attest:



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Suzanne Lindenfeld  
District Secretary