



- Board of Directors
Legal and Claims

3/10/2020 Board Meeting

8-6

Subject

Approve amendments to the Metropolitan Water District Administrative Code to conform its public contracting provisions to current law and practices; the General Manager has determined that this action is exempt from or otherwise not subject to CEQA

Executive Summary

The proposed amendments identified herein will update the Metropolitan Water District Administrative Code (the Code) to conform to current law and practices as they relate to public contracting. Specifically, the proposed changes will update the Code to clarify protest procedures, as well as the duties and functions of standing committees, refine emergency public works contracting and subcontractor substitution procedures to be consistent with current statutes, clarify the authority provided to the General Manager in amending contracts, and modify posting and advertising procedures for competitive sealed bidding consistent with current industry practices.

Details

Background

Over the past several years, staff has determined that the Code contains various ambiguities related to Metropolitan's public contracting practices and procedures. This action proposes amendments to the Code to conform Metropolitan's existing contracting procedures to current law and industry practices. The proposed amendments also update the Code to define procedures related to protests associated with public works, purchasing, and professional and technical services contracting.

The proposed amendments are set forth in **Attachment 1**, with overstrikes reflecting deletions and underlining reflecting additions. **Attachment 2** sets forth the sections as they will appear in the Code if the changes are approved.

Amendments to Administrative Code

The Code is proposed to be amended to conform to current law and practices, and to make recommended clarifications, as follows:

1. Change Section 2416(f)(3) to clarify that hearings on the appeals of protest denials involving purchasing contracts and professional and technical services contracts shall be conducted by the Executive Committee and that the Chair of the Executive Committee may re-delegate the committee's duties with respect to protests to a subcommittee.
2. Add a new paragraph (b) to Section 2431 to specify that hearings on appeals of bid protest denials involving public works contracts shall be conducted by the Engineering and Operations Committee and that the Chair of the Engineering and Operations Committee may re-delegate the committee's duties with respect to protests to a subcommittee, and makes conforming changes to Section 2431.
3. Add a new definition to Section 8100 to clarify that "purchasing contract." does not include professional and technical services and renumbers subsequent definitions within the Section.
4. Change Section 8122(b) to clarify that in cases of emergency, the General Manager may waive competitive bidding requirements and authorize emergency contracts, irrespective of the dollar amount.

5. Change Section 8122(b)(2) to clarify the circumstances under which the General Manager must return to the Board to ratify emergency contracts.
6. Add Section 8122(b)(4) to define what constitutes an “emergency” in the context of emergency contracting for public works.
7. Under Section 8123, further delineates and clarifies the authority of the General Manager to amend contracts in the categories of public works, purchasing, and professional and technical services.
8. Change Section 8140(1) to clarify that the requirements for competitive procurement for purchasing and professional and technical services contracts (\$75,000 or more) differ from the requirements for public works contracts (exceeding \$25,000).
9. Rename Section 8142 from “Prebid Procedures for Competitive Sealed Bidding” to “Public Works Contracting”; replaces the term “applicant(s)” with the term “bidder(s)”; and deletes paragraphs (e) through (g), which become obsolete with the addition of Section 8150 – Protests, as described below.
10. Change Section 8144(b) to conform the current practice of posting public works bid solicitations electronically and ends the outdated practice of physically posting solicitations in a public place within the District.
11. Rename Section 8148 from “Delegation of Hearing Power” to “Hearings on Substitution of Contractors”; delegates hearing authority and final decision making to the General Manager; allows the General Manager to re-delegate this authority to any officer or employee of the District; and conforms hearing procedures on substitutions of subcontractors to state law (i.e., Public Contract Code Section 4107).
12. Change Section 8149(d)(2) to address the selection of a best value procurement proposal which is not the lowest price.
13. Add Section 8150 – Protests, outlining the procedures for all contract-related protests by incorporating procedures previously contained in Sections 2416(f)(3) and 8142(e)-(g); specifying that protest procedures shall be developed and administered by the Engineering Group Services Manager for public works contracts and by the Contracting Services Manager for purchasing and professional and technical services contracts; and clarifying, consistent with current practices, the process by which the General Manager denies protests.

Policy

Chapter 4 of Division II of the Metropolitan Water District Administrative Code, Article 2 Section 2416. Duties and Functions.

Chapter 1 of Division VIII of the Metropolitan Water District Administrative Code, Article 2 Sections 8122 through 8123. Authority to Contract.

Chapter 1 of Division VIII of the Metropolitan Water District Administrative Code, Article 3 Sections 8140, 8142, 8144, 8148 through 8150. Award of Contracts.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines) and organizational or administrative activities (Section 15378(b)(5) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and approve amendments to the Code set forth in **Attachment 2** to reflect the changes recommended by this letter.

Fiscal Impact: None

Business Analysis: This option will conform the Code to current law and practices as they relate to public contracting.

Option #2

Do not approve amendments to the Code set forth in **Attachment 2** to reflect the changes recommended by this letter.

Fiscal Impact: None

Business Analysis: The Code will not be amended to conform to current law and practices. Failure to implement these changes will forego an opportunity to clarify provisions of the Code related to public contracting.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

3/5/2020
Date

Attachment 1 – The Administrative Code of The Metropolitan Water District of Southern California (with changes marked)

Attachment 2 – The Administrative Code of The Metropolitan Water District of Southern California (clean version)

Ref# es12662800

Division II**PROCEDURES PERTAINING TO THE BOARD, COMMITTEES AND DIRECTORS****Chapter 4****STANDING COMMITTEES****Article 2****EXECUTIVE COMMITTEE****§ 2416. Duties and Functions. [Executive Committee]**

(f) The Executive Committee shall also:

(3) Conduct hearings on ~~vendors'~~appeals of protest denials involving Purchasing Contracts and Professional and Technical Services Contracts pursuant to Section 8150(b).;

(i) Hearings ~~requested pursuant to Section 8142(d), and other hearings granted on the Executive Committee's own motion, unless delegated pursuant to Section 8148~~ shall be held by the committee at its next regular meeting to be held at least 72 hours after the filing of the notice of ~~protest~~appeal of the General Manager's determination under Section 8150(b). ~~The hearing shall be conducted in accordance with such rules as the Chair of the committee shall announce. The committee shall make a decision on the bidder's or applicant's protest, shall set forth its reasons therefor, and shall cause the Board Executive Secretary to serve a copy of the decision on the bidder or applicant.~~ The decision of the committee shall be final unless the committee vchooses to refer the notice of protest to the Board.

(ii) The Chair of the Executive Committee may re-delegate hearings duties provided for under subparagraph (i) above to a minimum of three members of the Executive Committee who shall act in place of the committee ~~in the conduct of the hearing and who shall at the conclusion thereof make their recommendations to the full committee. Such recommendations shall be accompanied by copies of any materials submitted in evidence. Any hearing held and recommendations made pursuant to such delegated authority shall be completed in advance of the time set for the next regular meeting of the full committee following the meeting at which the matter would otherwise have been heard by the committee.~~

Article 3**ENGINEERING AND OPERATIONS COMMITTEE****§ 2431. Duties and Functions.**

(a) The Engineering and Operations Committee shall study, advise and make recommendations with regard to:

(a) (1) Plans, specifications and bids;

(b) (2) The initiation, scheduling, contracting, and performance of construction programs and work, and the equipment or materials to be used, replaced, disposed of, or salvaged;

(c) (3) Such matters as may come to its attention on inspection trips of the aqueduct works which the committee shall make at least once a year;

(d) (4) The operation, protection, and maintenance of the plants and facilities required for the production, exchange, sale, storage, treatment, and delivery of water and power and for the storage and treatment of water; and for the distribution of electrical energy to the aqueduct pumping plants;

(e) (5) The providing of storage and distribution facilities and connections for the delivery of water;

(f) (6) Construction claims;

(g) (7) Engineering aspects of State Water Project facilities;

(h) (8) The selection of engineering and geologic consultants and the determination of the scope of their assignments;

(i) (9) Energy matters in general;

(j) (10) Water treatment technologies for complying with drinking water regulations;

(k) (11) Water quality policies and standards;

(l) (12) Policies regarding the quality of imported, reclaimed, reused and stored water;

(m) (13) The effect on the District of existing and proposed federal, state, and local water quality statutes and regulations;

(n) (14) Proposed amendments to the Metropolitan Water District Act and Code affecting the engineering and operations functions of the District and water quality;

(o) (15) Proposed rules and proposals regarding business development opportunities for intellectual property transactions; and.

(p) (16) The District's Capital Investment Program and appropriations for capital projects.

-(b) The Engineering and Operations Committee shall also conduct hearings on appeals of protest denials involving Public Works Contracts pursuant to Section 8150(a).

(1) Hearings shall be held by the committee at its next regular meeting, at least 72 hours after the filing of the notice of appeal of the General Manager's determination under Section 8150(a). The decision of the committee shall be final unless the committee chooses to refer the notice of protest to the Board.

(2) The Chair of the Engineering and Operations Committee may re-delegate duties provided for under subparagraph (1) above to a minimum of three members of the Engineering and Operations Committee who shall act in place of the committee.

Division VIII

CONTRACTS/DISTRICT PROPERTY

Chapter 1

CONTRACTS

Article 1

GENERAL PROVISIONS

§ 8100. Definitions.

The definitions contained in this section govern the interpretation of this chapter:

(k) Purchasing – “Purchasing” means the procurement of goods or services other than Professional and Technical Services.

(k1) Request for Proposals – “Request for proposals” means documents, whether attached or incorporated by reference, used for soliciting technical proposals ~~through a competitive sealed proposal process.~~

(lm) Request for Qualifications² – “Request for qualifications” means all documents, whether attached or incorporated by reference, used for soliciting qualifications statements for the purpose of evaluating and pre-qualifying prospective contractors for a proposed contract or specified kinds of work or, where appropriate, selecting the most qualified contractor for a particular contract.

Article 2

AUTHORITY TO CONTRACT

§ 8122. General Manager's Contracting Authority in Specified Circumstances.

(b) Emergency Contracts. - ~~The~~ In cases of an emergency the General Manager is delegated the authority to waive competitive bid requirements and, notwithstanding Section 8121(a), execute any contracts over the amount of \$250,000 for the construction of works or structures, for the purchase of equipment, materials or supplies, or performance of labor or services and take any directly related and immediate action required by that emergency when such construction, purchase of equipment, materials or supplies is determined by the General Manager to be for an emergency, subject to the following requirements:

(2) For contracts exceeding the General Manager's authority under Section 8121, At each regularly scheduled meeting following the emergency action, the Board shall determine by four-fifths vote whether there is a need to continue the action or terminate action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed through competitive bid procedures.

(4) An "emergency," as used herein, means a sudden, unexpected occurrence that requires immediate action to prevent or mitigate the loss or substantial impairment of life, health, property, or essential public services.

§ 8123. Authority of the General Manager to Amend Contracts.

~~(a) Except for capital construction contracts, if the amount payable under a change order is \$250,000 or less, the General Manager is authorized to execute the change order even if the change order will bring the total amount payable under the contract to more than \$250,000. Notwithstanding the foregoing, the General Manager shall not, without prior Board approval, issue one or more change orders totaling more than \$250,000 to a contract involving an original total amount payable of \$250,000 or less, or a change order that would cause the amount payable under a contract for professional and consulting services to exceed the limit established by Section 8121(c).~~

~~(ba) The General Manager may authorize change orders for Public Works Contracts without Board approval. Change orders for capital construction projects may be executed by the General Manager without prior Board approval to increase the amount payable of the initial contract by the greater of (i) an aggregate amount of \$250,000 per contract or (ii) an aggregate amount not to exceed 5 percent of the initial amount of the contract, whichever is greater.~~

~~(b) The General Manager may authorize change orders for Purchasing Contracts without Board approval to increase the amount payable of the initial contract by an aggregate amount of \$250,000 per contract.~~

(c) Change orders for Professional and Technical Services Contracts may not be executed by the General Manager in an amount that would increase the total payable amount under the initial contract to an amount exceeding \$250,000 without prior Board approval.

Article 3

AWARD OF CONTRACTS

§ 8140. Competitive Procurement.

1. All ~~contracts-Purchasing Contracts and Professional and Technical Services Contracts in the amount of per Section 8141(a) contracts to cost~~ \$75,000 or more shall be made upon a competitive procurement method of either competitive sealed bidding or best value procurement as provided in this Chapter, except: . . .

§ 8142. ~~Prebid Procedures for Competitive Sealed Bidding~~Public Works Contracting

(a) As used in this Section 8142, the term "~~applicants~~bidders" includes prospective bidders and lower-tier contractors for contracts to be performed for the District.

(b) The notice inviting bids for a Public Works Contract shall provide for the District's right to reject any and all proposals.

(c) The contracting procedure may provide one or more of the following:

(1) That, the General Manager shall determine the responsibility of ~~applicants~~bidders in advance of receipt of bids and that bidding shall be restricted to bidders determined by the General Manager to be responsible ~~or that the performance of lower-tier contracts shall be restricted to lower-tier contractors determined by the General Manager to be responsible~~. In determining responsibility, the General Manager may consider:

(i) ~~An applicant~~A bidder's experience in the design, construction, fabrication, assembly, or manufacture of works or materials similar to what will be called for under the contract documents;

(ii) The experience of others with the ~~applicant~~bidder in the construction, fabrication, assembly, or operation of similar works or materials designed, constructed, fabricated, or assembled by the applicant;

(iii) The physical plant, facilities, and equipment the ~~applicant~~bidder proposes to employ in the performance of a proposed contract or lower-tier contract;

(iv) The experience and expertise of a n applicant's bidder's responsible managing personnel, key staff members, and other employees who would be assigned to the work if the applicant bidder were awarded the contract or lower-tier contract;

(v) As to prospective bidders, the extent to which any part of the contract is to be performed by lower-tier contractors or suppliers;

(vi) The financial capability and resources of the applicant bidder to perform the proposed contract or lower-tier contract; and

(vii) Any other factor bearing on the responsibility of a n applicant bidder.

(2) That, subject to standards to be set forth in the contract documents, each prospective bidder shall submit a technical proposal to the District and the responsiveness to the specifications of such proposal shall be determined by the General Manager in advance of receipt of bids and bidding shall be restricted to bidders determined by the General Manager to have furnished a technical proposal determined by the General Manager to be responsive.

Provisions implementing this Section 8142(c)(2) shall not be included in the contract documents unless the General Manager finds the following conditions to be true:

(i) There are no sufficiently definite or complete specifications or purchase descriptions available to permit free competition without engineering evaluation and discussion of the technical aspects of the procurement;

(ii) Criteria do exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements; and special requirements for operational suitability and ease of maintenance; and

(iii) It is expected that more than one technically qualified source will be available, both initially and after technical evaluation.

(3) That, as a condition to submitting a bid or performing a specified portion of the proposed contract, a n applicant bidder shall comply with any and all conditions precedent determined by the General Manager to be necessary to enable the applicant bidder to submit a bid to the District or to any other applicant bidder, as the case may be, which takes into account all factors affecting performance of the work or portion of the work to be performed by the applicant bidder.

(4) The General Manager may determine that an applicant bidder is responsible to perform more than one contract for which notices inviting bids are to be posted and advertised after the date of the General Manager's determination. In the event of such prior determination, the General Manager may, at any time thereafter:

(i) Determine that an applicant bidder is no longer responsible, or

(ii) Advertise and post additional notices requesting pre-qualification information and determine that additional ~~applicants-bidders~~ are responsible to perform contracts subsequent to the contract for which pre-qualification information is initially requested.

(d) In the event ~~any applicant is determined by that~~ the General Manager determines that (i) a bidder is not to be responsible or no longer responsible after previously having been determined to be responsible, ~~or (ii) a prospective bidder's proposal is determined by the General Manager not to be technically responsive to the contract documents, or the General Manager determines that (iii) a bidder or an applicant has failed to comply with a condition precedent, the General Manager shall set forth his or her the~~ determination in writing together with ~~his or her the~~ reasons therefore and shall serve a copy of the determination and reasons on the bidder or applicant. ~~The bidder or applicant may, within 10 days after service of the General Manager's decision, file with the Board Executive Secretary a notice of protest and demand for hearing by the Board.~~

~~— (e) Any hearing requested pursuant to Section 8142(d) shall be conducted by the Board in accordance with the procedures provided for in Section 8148. The Board may, in its discretion, delegate its authority under Section 8142(d) or Section 8148 to a standing or ad hoc committee of the Board.~~

~~— (f) In the event a decision on a bidder's or applicant's protest is made less than 20 days before the date set for the opening of proposals, such opening shall be postponed to a date not less than 20 days after the date of decision.~~

~~— (g) Notwithstanding any provision to the contrary in this Section 8142, there shall be no right to a hearing on a bidder's or applicant's protest when the Executive Committee determines that award of contract is of an emergency.~~

§ 8144. Posting and Advertising for Competitive Sealed Bidding.

(b) Public Works Contracts Estimated to Cost \$25,000 or More. - Whenever a contract required to be let upon competitive bidding is estimated to cost \$25,000 or more, a notice inviting bids shall be ~~posted in a public place within the District and shall be published not less than once in a newspaper or periodical~~ published no less than once within an online bidding platform designated by the General Manager at least five days, exclusive of Saturday, Sunday and holidays, before the time for opening bids; provided, however, that the foregoing requirement shall not apply when bids will be considered only from bidders determined to be pre-qualified or whose technical proposal is determined to be responsive to the District's specifications, as determined under the procedure set forth in Section 8142.

§ 8148. Delegation of Hearing Power Hearings on Substitution of Subcontractors.

~~Hearings on Substitution of Subcontractors.~~

~~(a) Whenever the Board is required by Section 4107 of the Public Contract Code to hold a hearing the General Manager is authorized and directed to conduct such hearing, prescribe procedures therefore, give proper notice thereof, receive all evidence and testimony, rule on the admissibility of evidence, prepare a record of the proceedings, and submit such record and recommendations and based only upon such record, the Board shall make the determination required by law. A prime contractor may request that the General Manager consent to substitution of a subcontractor listed in the original bid if it believes that the subcontractor is not, or is no longer, a responsible contractor.~~

~~(b) The General Manager may consent to the substitution of another subcontractor for the subcontractor listed in a prime contractor's original bid whenever the listed subcontractor, after having been notified as required by law, fails to submit written objections within the time allowed by law and the General Manager determines that one of the grounds for substitution listed in Section 4107 of the Public Contract Code has been established to the General Manager's satisfaction. Prior to giving consent for a substitution, the General Manager shall give written notice to the listed subcontractor of the prime contractor's request.~~

~~(c) Any power delegated to the General Manager by this Section 8148 may be re-delegated by the General Manager to any officer or employee of the District. The listed subcontractor shall have five business days to object in writing to the requested substitution and request a hearing. If the subcontractor does not object to the substitution in a timely manner, the General Manager may consent to the requested substitution upon determining that one or more of the nine grounds for substitution listed in Public Contracts Code Section 4107(a) has been established.~~

~~(d) If the listed subcontractor objects to the substitution in a timely manner, the General Manager shall give notice of a hearing, conduct the hearing, and issue a decision in accordance with Public Contract Code Section 4107. The decision of the General Manager made pursuant to this section shall be final.~~

~~(e) Any power delegated to the General Manager pursuant to this section may be re-delegated by the General Manager to any officer or employee of the District.~~

§ 8149. Best Value Procurement.

(d) Evaluation of Proposals

(2) Where the best value proposal is not the lowest price proposal from a responsive, responsible bidder, that selection shall be based on a written determination, applying the criteria provided in the request for proposals, by the Executive Officer or designee that the selected proposal is most advantageous to Metropolitan.

§ 8150. Protests.

(a) Public Works Contracts. – Within five days after service of the General Manager's determination under Section 8142(d), or within five days of the bid opening, a bidder may file a protest with the General Manager pursuant to procedures developed and administered by the Chief Engineer. If the General Manager denies the protest, in whole or in part, the bidder may file a notice of appeal of the protest denial with the Board Executive Secretary within five days of such denial. A hearing on the appeal by the Engineering and Operations Committee shall be conducted in accordance with Section 2431(b).

(b) Purchasing and Professional and Technical Services Contracts. – Within five days after the occurrence of an event subject to a protest under procedures developed and administered by the Contracting Services Manager, a respondent, or potential respondent, to a solicitation may file a protest with the General Manager pursuant to those procedures. Upon the General Manager's final determination on the protest, the respondent, or potential respondent, may file a notice of appeal of the determination with the Board Executive Secretary within five days of such determination. A hearing on the appeal by the Executive Committee shall be conducted in accordance with Section 2416(f)(3).

(c) Any hearing body that conducts a protest hearing pursuant to this section shall give proper notice thereof, receive evidence and rule upon its the admissibility, prepare a record of the proceedings, submit a written decision setting forth the bases for the decision, and cause a copy of the decision to be served upon the appellant.

(d) In the event that a decision on a protest is made less than 20 days before the date set for a bid opening or submittal of a proposal, such opening or submittal shall be postponed to a date not less than 20 days after the date of decision.

(e) There shall be no right to protest an approval or ratification of a contract by the Executive Committee pursuant to Section 2416(f)(1).

(f) Any power delegated to the General Manager pursuant to this section may be re-delegated by the General Manager to any officer or employee of the District.

Division II

PROCEDURES PERTAINING TO THE BOARD, COMMITTEES AND DIRECTORS

Chapter 4

STANDING COMMITTEES

Article 2

EXECUTIVE COMMITTEE

§ 2416. Duties and Functions. [Executive Committee]

(f) The Executive Committee shall also:

(3) Conduct hearings on appeals of protest denials involving Purchasing Contracts and Professional and Technical Services Contracts pursuant to Section 8150(b).

(i) Hearings shall be held by the committee at its next regular meeting to be held at least 72 hours after the filing of the notice of appeal of the General Manager's determination under Section 8150(b). The decision of the committee shall be final unless the committee chooses to refer the notice of protest to the Board.

(ii) The Chair of the Executive Committee may re-delegate duties provided for under subparagraph (i) above to a minimum of three members of the Executive Committee who shall act in place of the committee.

Article 3

ENGINEERING AND OPERATIONS COMMITTEE

§ 2431. Duties and Functions.

(a) The Engineering and Operations Committee shall study, advise and make recommendations with regard to:

(1) Plans, specifications and bids;

(2) The initiation, scheduling, contracting, and performance of construction programs and work, and the equipment or materials to be used, replaced, disposed of, or salvaged;

(3) Such matters as may come to its attention on inspection trips of the aqueduct works which the committee shall make at least once a year;

(4) The operation, protection, and maintenance of the plants and facilities required for the production, exchange, sale, storage, treatment, and delivery of water and power and for the

storage and treatment of water; and for the distribution of electrical energy to the aqueduct pumping plants;

(5) The providing of storage and distribution facilities and connections for the delivery of water;

(6) Construction claims;

(7) Engineering aspects of State Water Project facilities;

(8) The selection of engineering and geologic consultants and the determination of the scope of their assignments;

(9) Energy matters in general;

(10) Water treatment technologies for complying with drinking water regulations;

(11) Water quality policies and standards;

(12) Policies regarding the quality of imported, reclaimed, reused and stored water;

(13) The effect on the District of existing and proposed federal, state, and local water quality statutes and regulations;

(14) Proposed amendments to the Metropolitan Water District Act and Code affecting the engineering and operations functions of the District and water quality;

(15) Proposed rules and proposals regarding business development opportunities for intellectual property transactions; and.

(16) The District's Capital Investment Program and appropriations for capital projects.

(b) The Engineering and Operations Committee shall also conduct hearings on appeals of protest denials involving Public Works Contracts pursuant to Section 8150(a).

(1) Hearings shall be held by the committee at its next regular meeting, at least 72 hours after the filing of the notice of appeal of the General Manager's determination under Section 8150(a). The decision of the committee shall be final unless the committee chooses to refer the notice of protest to the Board.

(2) The Chair of the Engineering and Operations Committee may re-delegate duties provided for under subparagraph (1) above to a minimum of three members of the Engineering and Operations Committee who shall act in place of the committee.

Division VIII

CONTRACTS/DISTRICT PROPERTY

Chapter 1

CONTRACTS

Article 1

GENERAL PROVISIONS

§ 8100. Definitions.

The definitions contained in this section govern the interpretation of this chapter:

(k) Purchasing –“Purchasing” means the procurement of goods or services other than Professional and Technical Services.

(l) Request for Proposals – “Request for proposals” means documents, whether attached or incorporated by reference, used for soliciting technical proposals.

(m) Request for Qualifications – “Request for qualifications” means all documents, whether attached or incorporated by reference, used for soliciting qualifications statements for the purpose of evaluating and pre-qualifying prospective contractors for a proposed contract or specified kinds of work or, where appropriate, selecting the most qualified contractor for a particular contract.

Article 2

AUTHORITY TO CONTRACT

§ 8122. General Manager’s Contracting Authority in Specified Circumstances.

(b) Emergency Contracts. - In cases of an emergency the General Manager is delegated the authority to waive competitive bid requirements and, notwithstanding Section 8121(a), execute any contract for the construction of works or structures, for the purchase of equipment, materials or supplies, or performance of labor or services and take any directly related and immediate action required by that emergency when such construction, purchase of equipment, materials or supplies is determined by the General Manager to be for an emergency, subject to the following requirements:

(2) For contracts exceeding the General Manager's authority under Section 8121, at each regularly scheduled meeting following the emergency action, the Board shall determine by four-fifths vote whether there is a need to continue the action or terminate action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed through competitive bid procedures.

(4) An "emergency," as used herein, means a sudden, unexpected occurrence that requires immediate action to prevent or mitigate the loss or substantial impairment of life, health, property, or essential public services.

§ 8123. Authority of the General Manager to Amend Contracts.

(a) The General Manager may authorize change orders for Public Works Contracts without Board approval to increase the amount payable of the initial contract by the greater of (i) an aggregate amount of \$250,000 per contract or (ii) an aggregate amount not to exceed 5 percent of the initial amount of the contract.

(b) The General Manager may authorize change orders for Purchasing Contracts without Board approval to increase the amount payable of the initial contract by an aggregate amount of \$250,000 per contract.

(c) Change orders for Professional and Technical Services Contracts may not be executed by the General Manager in an amount that would increase the total payable amount under the initial contract to an amount exceeding \$250,000 without prior Board approval.

Article 3

AWARD OF CONTRACTS

§ 8140. Competitive Procurement.

1. All Purchasing Contracts and Professional and Technical Services Contracts in the amount of \$75,000 or more shall be made upon a competitive procurement method of either competitive sealed bidding or best value procurement as provided in this Chapter, except:

§ 8142. Public Works Contracting

(a) As used in this Section 8142, the term "bidders" includes prospective bidders and lower-tier contractors for contracts to be performed for the District.

(b) The notice inviting bids for a Public Works Contract shall provide for the District's right to reject any and all proposals.

(c) The contracting procedure may provide one or more of the following:

(1) That, the General Manager shall determine the responsibility of bidders in advance of receipt of bids and that bidding shall be restricted to bidders determined by the General Manager to be responsible. In determining responsibility, the General Manager may consider:

(i) A bidder's experience in the design, construction, fabrication, assembly, or manufacture of works or materials similar to what will be called for under the contract documents;

(ii) The experience of others with the bidder in the construction, fabrication, assembly, or operation of similar works or materials designed, constructed, fabricated, or assembled by the applicant;

(iii) The physical plant, facilities, and equipment the bidder proposes to employ in the performance of a proposed contract or lower-tier contract;

(iv) The experience and expertise of a bidder's responsible managing personnel, key staff members, and other employees who would be assigned to the work if the bidder were awarded the contract or lower-tier contract;

(v) As to prospective bidders, the extent to which any part of the contract is to be performed by lower-tier contractors or suppliers;

(vi) The financial capability and resources of the bidder to perform the proposed contract or lower-tier contract; and

(vii) Any other factor bearing on the responsibility of a bidder.

(2) That, subject to standards to be set forth in the contract documents, each bidder shall submit a technical proposal to the District and the responsiveness to the specifications of such proposal shall be determined by the General Manager in advance of receipt of bids and bidding shall be restricted to bidders determined by the General Manager to have furnished a technical proposal determined by the General Manager to be responsive.

Provisions implementing this Section 8142(c)(2) shall not be included in the contract documents unless the General Manager finds the following conditions to be true:

(i) There are no sufficiently definite or complete specifications or purchase descriptions available to permit free competition without engineering evaluation and discussion of the technical aspects of the procurement;

(ii) Criteria do exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements; and special requirements for operational suitability and ease of maintenance; and

(iii) It is expected that more than one technically qualified source will be available, both initially and after technical evaluation.

(3) That, as a condition to submitting a bid or performing a specified portion of the proposed contract, a bidder shall comply with any and all conditions precedent determined by the General Manager to be necessary to enable the bidder to submit a bid to the District or to any other bidder, as the case may be, which takes into account all factors affecting performance of the work or portion of the work to be performed by the bidder.

(4) The General Manager may determine that a bidder is responsible to perform more than one contract for which notices inviting bids are to be posted and advertised after the date of the General Manager's determination. In the event of such prior determination, the General Manager may, at any time thereafter:

(i) Determine that a bidder is no longer responsible, or

(ii) Advertise and post additional notices requesting pre-qualification information and determine that additional bidders are responsible to perform contracts subsequent to the contract for which pre-qualification information is initially requested.

(d) In the event that the General Manager determines that (i) a bidder is not responsible or no longer responsible after previously having been determined to be responsible, (ii) a bidder's proposal is not responsive to the contract documents, or (iii) a bidder has failed to comply with a condition precedent, the General Manager shall set forth the determination in writing together with the reasons therefore and shall serve a copy of the determination and reasons on the bidder or applicant.

§ 8144. Posting and Advertising for Competitive Sealed Bidding.

(b) Public Works Contracts Estimated to Cost \$25,000 or More. - Whenever a contract required to be let upon competitive bidding is estimated to cost \$25,000 or more, a notice inviting bids shall be published no less than once within an online bidding platform designated by the General Manager at least five days, exclusive of Saturday, Sunday and holidays, before the time for opening bids; provided, however, that the foregoing requirement shall not apply when bids will be considered only from bidders determined to be pre-qualified or whose technical proposal is determined to be responsive to the District's specifications, as determined under the procedure set forth in Section 8142.

§ 8148. Hearings on Substitution of Subcontractors.

(a) A prime contractor may request that the General Manager consent to substitution of a subcontractor listed in the original bid if it believes that the subcontractor is not, or is no longer, a responsible contractor.

(b) Prior to giving consent for a substitution, the General Manager shall give written notice to the listed subcontractor of the prime contractor's request.

(c) The listed subcontractor shall have five business days to object in writing to the requested substitution and request a hearing. If the subcontractor does not object to the substitution in a timely manner, the General Manager may consent to the requested substitution upon determining that one or more of the nine grounds for substitution listed in Public Contracts Code Section 4107(a) has been established.

(d) If the listed subcontractor objects to the substitution in a timely manner, the General Manager shall give notice of a hearing, conduct the hearing, and issue a decision in accordance with Public Contract Code Section 4107. The decision of the General Manager made pursuant to this section shall be final.

(e) Any power delegated to the General Manager pursuant to this section may be re-delegated by the General Manager to any officer or employee of the District.

§ 8149. Best Value Procurement.

(d) Evaluation of Proposals

- (2) Where the best value proposal is not the lowest price proposal from a responsive, responsible bidder, that selection shall be based on a written determination, applying the criteria provided in the request for proposals, by the Executive Officer or designee that the selected proposal is most advantageous to Metropolitan.

§ 8150. Protests.

(a) Public Works Contracts. – Within five days after service of the General Manager's determination under Section 8142(d), or within five days of the bid opening, a bidder may file a protest with the General Manager pursuant to procedures developed and administered by the Chief Engineer. If the General Manager denies the protest, in whole or in part, the bidder may file a notice of appeal of the protest denial with the Board Executive Secretary within five days of such denial. A hearing on the appeal by the Engineering and Operations Committee shall be conducted in accordance with Section 2431(b).

(b) Purchasing and Professional and Technical Services Contracts. – Within five days after the occurrence of an event subject to a protest under procedures developed and administered by the Contracting Services Manager, a respondent, or potential respondent, to a solicitation may file a protest with the General Manager pursuant to those procedures. Upon the General Manager's final determination on the protest, the respondent, or potential respondent, may file a notice of appeal of the determination with the Board Executive Secretary within five days of such determination. A hearing on the appeal by the Executive Committee shall be conducted in accordance with Section 2416(f)(3).

(c) Any hearing body that conducts a protest hearing pursuant to this section shall give proper notice thereof, receive evidence and rule upon its the admissibility, prepare a record of the proceedings, submit a written decision setting forth the bases for the decision, and cause a copy of the decision to be served upon the appellant.

(d) In the event that a decision on a protest is made less than 20 days before the date set for a bid opening or submittal of a proposal, such opening or submittal shall be postponed to a date not less than 20 days after the date of decision.

(e) There shall be no right to protest an approval or ratification of a contract by the Executive Committee pursuant to Section 2416(f)(1).

(f) Any power delegated to the General Manager pursuant to this section may be re-delegated by the General Manager to any officer or employee of the District.