

RESOLUTION NO. 03-2020

**A RESOLUTION OF THE CABAZON WATER DISTRICT ADOPTING THE
FEDERAL EMERGENCY AND FEDERAL GRANT PROCUREMENT PROCEDURES**

WHEREAS, the Office of Management and Budget (OMB) requires the non-Federal entity to use procurement standards that conform to the procurement standards in the Uniform Guidance, codified at 2 CFR Sections 200.317-200.326.

WHEREAS, the Cabazon Water District (“District”) has prepared the Cabazon Water District Federal Grant Procurement Procedures (“Procedures”), attached hereto as Exhibit “A.”

WHEREAS, the District desires to adopt the Procedures for use by the District for procurements made (i) in preparation of, during, and after an emergency declared by the President of the United States, and that may be subject to federal funding or reimbursement; (ii) when using federal grant funds subject to the Uniform Guidance.

The District does hereby find, order and resolve as follows:

SECTION 1. The recitals set forth above are true and correct and are incorporated into this resolution by this reference.

SECTION 2. The District hereby adopts the Cabazon Water District Federal Emergency and Federal Grant Procurement Procedures, attached hereto as Exhibit “A.”

SECTION 3. This resolution shall be effective as of the date of adoption. The Clerk of the Board shall certify the adoption of this resolution.

ADOPTED this 6th day of April, 2020.

Ayes: Directors Wargo, Sanderson, Morris, Israel, Lynk

Nays: None

Absent: None

Abstain: None

[Signatures on following page]

SIGNATURE PAGE
TO
RESOLUTION NO. 03-2020


Robert Lynk
Board Chair

ATTEST:


Elizabeth Lemus
Clerk of the Board

APPROVED AS TO FORM:

Best Best & Krieger LLP

General Counsel

Exhibit "A"

FEDERAL EMERGENCY AND FEDERAL GRANT PROCUREMENT
PROCEDURES

[attached behind this page]

**CABAZON WATER
DISTRICT**

**FEDERAL EMERGENCY
AND FEDERAL GRANT
PROCUREMENT PROCEDURES**

April 6, 2020

CABAZON WATER DISTRICT
FEDERAL EMERGENCY AND FEDERAL GRANT
PROCUREMENT PROCEDURES

1. **Purpose**

The purpose of these Cabazon Water District (“District”) Federal Emergency and Federal Grant Procurement Procedures is to define the practices and policies governing the procurement of public works projects, contractual services, professional services or materials, supplies and equipment (i) in preparation of, during, and after an emergency that may be subject to federal funding or reimbursement; (ii) when using federal grant funds subject to the regulations set forth in the following sentence. These Federal Emergency Procurement Procedures are compliant with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2. **Federally Declared Emergencies and Federal Grants; Procurement and Contracting Requirements**

In the event of an emergency declared by the President of the United States, the District must comply with Federal procurement standards as a condition of receiving public assistance funding from the Federal Emergency Management Agency (FEMA) for contract costs for eligible work. FEMA funding is governed by Title 2 of the Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”).

In addition, most federal grant funding is also subject to the Uniform Guidance. Federal grant compliance requires the grantee to conduct procurements in accordance with written procurement policies and procedures that comply with the requirements set forth in the Uniform Guidance. These procurement procedures shall be complied with in connection with utilization of federal grant funding by the District, in addition to any other specific grant requirements.

These procedures are in addition to and are not intended to replace or supersede any other District procurement policies. In the case of a conflict between these procedures, or the District’s procurement policies, the more stringent requirement shall govern, provided that the more stringent requirement would not violate a federal procurement requirement. In such case, for federally funded contracts, the federal requirement shall govern.

(a) **Conflicts of Interest**

(i) **Standards of Conduct for Conflicts of Interest.** No employee, officer or agent of the District shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The District’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from

contractors, potential contractors, or parties to subagreements. Such a conflict will not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. Employees must follow applicable laws, rules, and regulations in regard to conflicts of interest including, but not limited to, the Political Reform Act, the prohibition against contractual conflicts of interest, and guidelines in the California Code of Regulations regarding acceptance of gifts.

(ii) Violations. Disciplinary actions to be applied for violations of the above standards are as follows.

(1) The violation of these Standards of Conduct by District employees will subject the violator to any disciplinary proceedings or action deemed appropriate by the General Manager. Employees may correct a violation in any manner provided for under the Political Reform Act, and its implementing regulations.

(2) The violation of any of these Standards of Conduct by District officers will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations.

(3) Contractors or subcontractors that violate these Standards of Conduct as relates to an active federally-funded procurement may be prohibited from bidding on the procurement, or may be subject to other action as deemed appropriate by the General Manager.

(4) Agents of the District that violate these Standards of Conduct as relates to federally-funded procurements may be prohibited from participation on behalf of the District on federally funded projects, or subject to other action as deemed appropriate by the General Manager.

(b) **Procurement Standards**

(i) Oversight. The District shall maintain administrative oversight of contractors to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

(ii) Economical Approach. The District must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. The District will enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. If feasible and it reduces project costs, the District will explore using federal excess and surplus property in lieu of purchasing new equipment and property. When appropriate, the District will investigate using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

(iii) Detailed Records. The District shall maintain records sufficient to detail the history of each procurement. These records will include, but are not necessarily limited to the

following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(iv) Procurement Issues. The District alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. Protest procedures or information on obtaining the procedures shall be included in the procurement documents.

(c) **Competition**

(i) Full and Open Competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest, as further detailed herein;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(ii) Organizational Conflicts of Interest. An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor itself developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with applicable state and federal laws and regulations, a contractor that develops or assists in developing specifications, requirements, statements of work, invitation for bids, and/or request for proposals for a District procurement is excluded from competing for the resultant procurement, unless an appropriate waiver is issued by the District. All waivers will be assessed by the District on a case-by-case basis.

(iii) Geographical Preference. The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local

geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(iv) Procurement Transactions. The District shall require the following information for procurement transactions:

(1) A clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(2) All requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(v) Prequalification Lists. The District shall ensure that all prequalified lists, if used, of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The District shall not preclude potential bidders from qualifying during the solicitation period.

(d) Procurement Procedures

The thresholds below are federal thresholds. If the federal government adopts higher thresholds during a declared emergency, the higher thresholds shall apply. If District thresholds are lower, the more restrictive requirement shall govern, notwithstanding the provisions herein, unless otherwise approved by the Board.

(i) Micro-Purchases. Purchases within the micro-purchase threshold (e.g., currently set at purchases of \$10,000 or less but periodically adjusted for inflation) may be awarded without soliciting competitive quotations if the District considers the price to be reasonable. To the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers.

(ii) Small Purchases. Purchases within the simplified acquisition threshold (e.g., currently set at purchases of \$250,000 or less) shall not be required to be formally bid. Price quotations must be received from no less than three (3) sources.

(iii) Formal, Sealed Bidding.

(1) Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. Formal, sealed bidding is required for purchases greater than the simplified acquisition threshold, which is currently set at \$250,000, or as may be adjusted by the Federal Acquisition Regulation, pursuant to 48 CFR § 2.101.

(2) This is the preferred method for procuring construction, if a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively and for the business; and the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

(3) The District must publicly advertise the Invitation for Bids and publicly open all bids at the time and place prescribed in the invitation.

(4) Any contracts awarded pursuant to this procedure shall be to the lowest responsible bidder submitting a responsive bid and shall be for a firm fixed price. Any or all bids may be rejected if there is a sound documented reason.

(iv) Competitive Proposals.

(1) When the nature of a procurement does not lend itself to formal, sealed bidding, the District may solicit competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded.

(2) A request for proposals (RFP) must be publicly advertised, and the District must solicit proposals from an adequate number of sources. The RFP must identify all evaluation factors and their relative importance; however, the numerical or percentage ratings or weights need not be disclosed.

(3) Evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the selection decision.

a. The District's procurement officer shall establish a formal evaluation committee, of at least two persons. The size of an evaluation committee should be based on the size and complexity of the goods or services being procured and well balanced and represented by individuals involved with the procurement and/or affected by the goods or services being procured.

b. The evaluation committee will be charged with responsibility for evaluating proposals in accordance with the evaluation criteria in the solicitation, short listing firms, establishing a competitive range, and/or recommending a firm or firms for contract award.

(4) Any contract awarded based on the competitive proposal procurement process cannot be based exclusively on price or price-related factors.

(5) If a contract is awarded, it shall be to the responsible firm whose proposal is most advantageous to the District ("best value"), with price and other factors considered.

(v) Competitive Proposals for A&E Services. The competitive proposal procedures above may be used for procurement of architect and engineering (A&E) services, provided that proposers must be evaluated based on competence and qualifications, without regard to price. For A&E procurements, price will not be used as a selection factor. The District will rank proposers based on qualifications only, and attempt to negotiate fair and reasonable compensation with the highest ranked proposer. If negotiations with the highest ranked proposer are unsuccessful, such negotiations will be terminated and the District will commence negotiations with the next highest ranked proposer. This process shall be continued with successive qualified proposers until agreement is reached that is determined to be fair and reasonable.

(vi) Noncompetitive Procurements.

(1) Contracts may be procured through a noncompetitive proposal only when:

- a. The item is only available from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
- d. Competition is deemed inadequate after the solicitation of a number of sources.

(vii) Public Projects. Public projects shall be procured by the District's formal contract bid procedures, if any, and the formal, sealed bidding in this section. If there is conflict between the foregoing, the more restrictive requirements shall apply.

(viii) Award.

(1) Responsible Contractor. The District shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(2) Debarment and Suspension. In accordance with 2 CFR 200.213, in connection with the responsibility determination, a check of debarment and suspension using the System for Award Management (SAM), www.sam.gov, must be performed and documented in the procurement records prior to award.

(e) **Contracting with Small and Minority Firms, Women's Business Enterprises, and Labor Area Surplus Firms**

(i) The District must take all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible, as set forth at 2 CFR § 200.321 and detailed below. The District shall:

(1) Place qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

(ii) The District shall document the steps above, and any relevant findings applicable to any of the steps above in its procurement file.

(f) **Cost and Price**

(i) Cost or Price Analysis. The District shall perform a cost or price analysis in connection with every procurement action, including contract modifications, in excess of the simplified acquisition threshold. While the method and degree of analysis depend on the facts surrounding the particular procurement situation, the District must, at a minimum, make independent estimates before receiving bids or proposals.

(ii) Profit. The District shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed as required by 2 CFR § 200.323(b).

(iii) Estimated Costs. Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the District under 2 CFR 200.400 et seq.

(g) **Payment Procedures**

(i) Method of Contracting. Contracts entered into pursuant to these procedures shall utilize only fixed-price, cost-reimbursement, or, to a limited extent, time and materials payment methods.

(ii) Prohibited Methods of Contracting. The District shall not use the cost plus a percentage of cost or percentage of construction cost methods of contracting for any work for which federal reimbursement will be sought.

(iii) Time and Materials ("T&M") Contracts

(1) T&M contracts should be used rarely, and the use of T&M contracts should be limited to a reasonable time period (e.g., no more than 70 hours) based on circumstances during which the District cannot define a clear scope of work.

(2) The District shall only enter into a time and materials contract if all of the following apply:

a. The District has determined and documented in the project file that no other contract is suitable;

b. The contract has a guaranteed maximum price that the contractor exceeds at its own risk; and

c. The District provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(3) The District must define the scope of work as soon as possible to enable procurement of a more acceptable type of contract (i.e., non-T&M).

(iv) Separate Invoicing

(1) All purchases made during a proclaimed emergency shall require separate invoicing from routine (i.e., non-emergency related) purchases. All invoices shall state the goods, services, or equipment provided and shall specify where the goods or services were delivered. All invoices shall specify the location(s) where the goods or services were used, if possible. Any invoice which fails to properly identify the emergency nature of the purchase and provide details as to the date(s) and location(s), as appropriate, shall not be paid until such errors are corrected by the vendor and re-submitted in correct form.

(v) Auditing of Invoices for Debris Removal. All invoices for debris clearance and removal shall be audited prior to payment to the contractor. Contractors shall be notified of this requirement prior to the award of any contract for debris clearance and/or

removal. Audits shall be in accordance with procedures for debris removal monitoring specified in FEMA's Publication 325, Debris Management Guide.

(h) Bonding Requirements

(i) Bonding. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (See 2 CFR 200.88), the District shall require at a minimum:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price.

(2) A performance bond on the part of the contractor for 100 percent of the contract price.

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

(i) Procurement of Recovered Materials

(i) For procurements covered under these procedures, the District and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with these requirements, the District shall only procure items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(ii) This requirement applies to purchases of items when the purchase price of the item exceeds \$10,000, or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

(j) Contract Provisions

(i) Contract Provisions. The District's contracts shall contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

(k) Pre-Event Contracts

(i) The District may choose to solicit bids and proposals and award contracts in non-disaster times. This may include, but is not limited to, debris removal contracts and debris monitoring contracts.