

## GENERAL AND PROCEDURAL RULES

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### 1.7 Purchasing Policies and Procedures.

- 1) **Purchasing Policy.** The \_\_\_\_\_ Community Development District shall conduct its purchasing activities in accordance with a purchasing policy, adopted by Board resolution, which complies with all applicable state, local, and federal laws.
- 2) **Protests.** The resolution of any protests with respect to proceedings under this rule or the District's purchasing policy shall be in accordance with this Rule.
  - a. *Filing.*
    - i. With respect to a protest regarding qualifications, specifications, documentation, or other requirements contained in a Request for Qualifications, Request for Proposals, Invitation to Bid, or Competitive Solicitation issued by the District, the notice of protest shall be filed in writing within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after the first advertisement of the Request for Qualifications, Request for Proposals, Invitation to Bid, or Competitive Solicitation. A formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days (including Saturdays, Sundays, and state holidays) after the initial notice of protest was filed. For purposes of this Rule, wherever applicable, filing will be perfected and deemed to have occurred upon receipt by the District. Failure to file a notice of protest shall constitute a waiver of all rights to protest any information contained in the District's Request for Qualifications, Request for Proposals, Invitation to Bid, or Competitive Solicitation. Failure to file a formal written protest shall constitute an abandonment of the protest proceedings and shall automatically terminate the protest proceedings.
    - ii. Except for those situations covered by subsection (1)(a) of this Rule, any firm or person who is affected adversely by a District's ranking or intended award under the purchasing policy and desires to contest the District's ranking or intended award, shall file with the District a written notice of protest within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after receipt of the notice of the District's ranking or intended award. A formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days (including Saturdays, Sundays, and state holidays) after the initial notice of protest was filed. For purposes of this Rule, wherever applicable, filing will be perfected

and deemed to have occurred upon receipt by the District. Failure to file a notice of protest shall constitute a waiver of all rights to protest the District's ranking or intended award. Failure to file a formal written protest shall constitute an abandonment of the protest proceedings and shall automatically terminate the protest proceedings.

- iii. If the requirement for the posting of a protest bond and the amount of the protest bond, which may be expressed by a percentage of the contract to be awarded or a set amount, is disclosed in the District's competitive solicitation documents for a particular purchase under the purchasing policy, any person who files a notice of protest must post the protest bond at the same time. The amount of the protest bond shall be determined by District staff after consultation with the District Counsel and within the limits, if any, imposed by Florida law. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District's costs, expenses, and attorney's fees associated with hearing and defending the protest. In the event the protest is settled by mutual agreement of the parties, the protest bond shall be distributed as agreed to by the District and protestor.
  - iv. The District does not accept documents filed by electronic mail or facsimile transmission. Filings are only accepted during normal business hours.
- b. *Contract Execution.* Upon receipt of a notice of protest which has been timely filed, the District shall not execute the contract under protest until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances showing that delay incident to protest proceedings will jeopardize the funding for the project, will materially increase the cost of the project, or will create an immediate and serious danger to the public health, safety, or welfare, the contract may be executed.
  - c. *Informal Proceeding.* If the Board determines a protest does not involve a disputed issue of material fact, the Board may, but is not obligated to, schedule an informal proceeding to consider the protest. Such informal proceeding shall be at a time and place determined by the Board. Notice of such proceeding shall be sent via facsimile, United States Mail, or hand delivery to the protestor and any substantially affected persons or parties not less than three (3) calendar days prior to such informal proceeding. Within thirty (30) calendar days following the informal proceeding, the Board shall issue a written decision setting forth the factual, legal, and policy grounds for its decision.
  - d. *Formal Proceeding.* If the Board determines a protest involves disputed issues of material fact or if the Board elects not to use the informal proceeding process provided

for in section (3) of this Rule, the District shall schedule a formal hearing to resolve the protest. The Chairperson shall designate any member of the Board (including the Chairperson), District Manager, District Counsel, or other person as a hearing officer to conduct the hearing. The hearing officer may:

- (a) Administer oaths and affirmations;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Regulate the course of the hearing, including any pre-hearing matters;
- (d) Enter orders; and
- (e) Make or receive offers of settlement, stipulation, and adjustment.

The hearing officer shall, within thirty (30) days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and a recommendation to the Board for final District action. The District shall allow each party fifteen (15) days in which to submit written exceptions to the recommended order. The District shall issue a final order within sixty (60) days after the filing of the recommended order.

- e. *Intervenors.* Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings.
  - f. *Rejection of all Qualifications, Bids, Proposals, Replies and Responses after Receipt of Notice of Protest.* If the Board determines there was a violation of law, defect, or an irregularity in the competitive solicitation process, the Bids, Proposals, Replies, and Responses are too high, or if the Board determines it is otherwise in the District's best interest, the Board may reject all qualifications, bids, proposals, replies, and responses and start the competitive solicitation process anew. If the Board decides to reject all qualifications, bids, proposals, replies, and responses and start the competitive solicitation process anew, any pending protests shall automatically terminate.
  - g. *Settlement.* Nothing herein shall preclude the settlement of any protest under this Rule at any time
- 3) ***Suspension.*** The District desires to solicit offers from, award contracts to, and consent to subcontracts only with, vendors known to be reliable, ethical and responsible. To that end, and as set forth below, the District may suspend or debar a vendor for cause. The District shall not accept any solicitation from, nor contract with, a vendor while it is suspended or debarred. The serious nature of suspension or debarment requires that such sanction be imposed only when it is in the District's best interest. Such suspension or debarment shall be imposed in accordance with the procedures contained herein.

- a. *Automatic Suspension.* Any vendors on a State or federal convicted vendor's list, or which are ineligible for contracting with a local government entity as provided by Section 287.135 (entitled "Prohibition against contracting with scrutinized companies") are automatically suspended by the District, without the necessity of a hearing or further notice, until (1) that vendor is no longer on such list or ineligible and (2) such vendor is reinstated in accordance with this Policy.
- b. *Application to Principals, Agents, and Affiliates.* Suspension or debarment applies to all officers, managers, principals, directors, partners, qualifiers, divisions, subsidiaries, or other organizational elements of the suspended or debarred vendor or any other entity in which the suspended or debarred vendor or person is an officer, manager, principal, director, partner, qualifier, division, subsidiary, or other organizational element. The suspension or debarment applies to any existing or future affiliates of the vendor.
- c. *Suspension:* A vendor may be suspended for cause. The following constitute cause:
  - i. Material failure to fully comply with the conditions, specifications, or terms of a contract with the District.
  - ii. Failure to substantially fulfill a Bid, Proposal or Quotation upon Award.
  - iii. Commission of any misrepresentation in connection with a Bid, Quotation or Proposal.
  - iv. A charge of a crime relating to obtaining or the performance of a public or private contract or subcontract; or a charge of a crime of dishonesty or moral turpitude, or any other criminal offense indicating a lack of business integrity or business honesty. If charges are dismissed or the vendor is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to the District.
  - v. Vendor becomes insolvent, proceedings in bankruptcy regarding the vendor are filed or, vendor compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property.
  - vi. Commission of any act or omission to perform any act that is grounds for debarment.
  - vii. Any other cause the Purchasing Department determines to be compelling as to affect the responsibility of a vendor as a District contractor materially and adversely, including but not limited to, suspension or debarment by another governmental entity.

- viii. Violation of the any provision of this policy or any ethical standards set forth in local, state or federal law.
  - ix. Suspension or debarment by another local government with which the District routinely participates in joint solicitations for goods or services.
- d. *Debarment*: A debarment is an indefinite suspension. A vendor may be debarred for the following:
- i. Failure to comply with the Conditions, Specifications, or Terms of a Contract with the District.
  - ii. Failure to perform in accordance with a Bid, Proposal or Quotation after Award.
  - iii. Conviction of a crime relating to obtaining or the performance of a public or private contract or subcontract; or conviction of a crime of dishonesty or moral turpitude, or any other criminal offense indicating a lack of business integrity or business honesty. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the District.
- e. *Effect of Suspension and Debarment*. The District will not solicit offers from, award contracts or purchase orders to, or consent to subcontracts with suspended or debarred vendors unless the District Manager or Designee determines that an Emergency exists justifying such action. Such vendors are also excluded from conducting business with the District as agents, representatives, subcontractors, or partners of other vendors.
- f. *Suspension and Debarment Process*: The following procedures shall be utilized for the suspension or debarment of a vendor:
- i. The District Manager or their designee may make a staff level determination of suspension or debarment and the period thereof. The staff level determination shall be in writing and include the facts justifying the suspension or debarment and provide for an opportunity for the vendor to make a written response. When the initial determination is made, the vendor and the Board shall be given written notice by the District Manager.
  - ii. If the vendor chooses to appeal a final staff level determination to the Board, the vendor shall have three (3) business days after written notice of the final staff level determination to file a notice of appeal with the District Manager; otherwise any objection is waived. Due process shall be afforded to the vendor; the determination of the District Board after a properly noticed public hearing regarding a suspension or debarment shall be the final and conclusive administrative decision by the District.

*g. Suspension or Debarment Period*

- i. **Suspension.** The term of a suspension shall be established consistent with the District's policies. The Board may shorten the term of a suspension in its discretion.
  - ii. **Debarment.** Debarment shall remain in effect unless and until the vendor is reinstated.
- h. **Reinstatement.** A suspended or debarred vendor may appeal for reinstatement at any time in accordance with the Procedures. Due process shall be afforded to the protester; the determination of the Board regarding a reinstatement shall be the final and conclusive administrative decision by the District.

**4) Improper Lobbying.** No bidder may engage in any effort, either directly or indirectly, to influence the actions of the Board with respect to a pending award of an agreement for which a solicitation was issued except as set forth in this section. Any bidder engaging in a protest to the District Board as allowed under this section, shall comply strictly with the requirements and restrictions of this section. Any attempt by any bidder to communicate with any District Board member, directly or indirectly, whether in person or through agents, employees, or lobbyists, or otherwise to influence the vote of any District Board member, in connection with any pending award of an agreement for which a solicitation has been issued, in any manner not strictly in compliance with the requirements and restrictions of this section shall be deemed in violation of the blackout period restriction. The District Board may disqualify a bid or proposal in connection with a procurement matter where District Board members or a member of the pertinent procurement committee has been lobbied in violation of the blackout period restrictions.