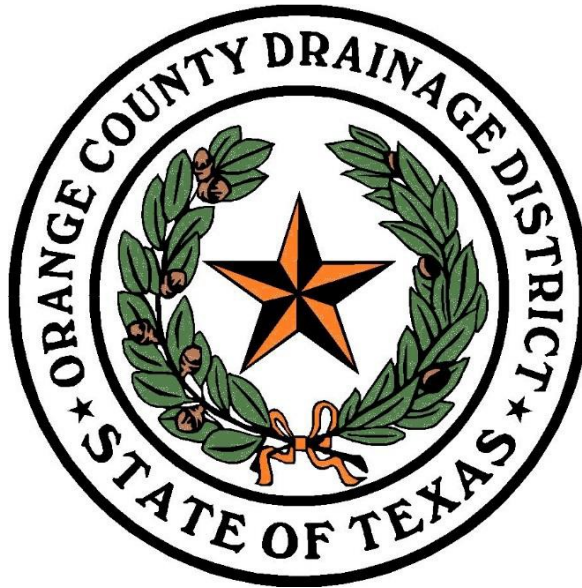


ORANGE COUNTY DRAINAGE DISTRICT PURCHASING POLICIES AND PROCUREMENT MANUAL

Revised August 20, 2019



**8081 Old Highway 90, Orange, Texas 77630
(409) 745-3225 Telephone (409) 745-3004 Facsimile
orangecountydrainage.com**

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Director At Large

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Precinct 4

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Table of Contents

I.	PURPOSE.....	5
II.	MISSION AND GOALS	5
	A. Mission.....	5
	B. Goals	5
	C. Implementation	6
III.	DEFINITIONS.....	6
IV.	IMPLEMENTATION AND ENFORCEMENT.....	11
	A. Distribution	11
	B. Enforcement.....	11
	C. Revisions.....	11
	D. Recommendations	11
	E. Maintenance of Purchasing Records.....	11
V.	CODE OF ETHICS.....	12
	A. Statement of Policy	12
	B. Written Code of Ethics.....	12
	C. Prohibitions Applicable To District Personnel	12
	D. Conflict Disclosure Statement Required of Employees	12
	E. Prohibitions Applicable to Vendors (or Potential Vendors)	12
	F. Remedial Action for Violation of Code of Ethics	12
VI.	PURCHASING AUTHORITY AND PROCEDURES	13
	A. General Statement of Policy	13
	B. Texas Water Code.....	13
	C. Purchasing Authority	13
	D. Miscellaneous Duties/Authority of the Purchaser	15
	E. Purchase Order and Signature Authority	126
VII.	GENERAL PURCHASING PROCEDURES	17
	A. General Provisions	17
	B. Bidders' Lists.....	18
	C. After Hours/Emergency Purchases	18
	D. Interlocal Agreements.....	18
	E. Bonding Requirements.....	18
	F. Savings Clause	19

VIII.	VENDOR QUALIFICATION AND REGISTRATION	19
A.	Statement of Policy	19
B.	SAM Registration	19
C.	HUB Registration.....	19
D.	Ineligibility.....	19
IX.	DEVELOPMENT OF SPECIFICATIONS	20
A.	Purpose.....	20
B.	Specifications	20
C.	Preparation of Specifications	20
D.	Approval of Specifications	20
E.	Captive Replacement Parts	20
X.	COMPETITIVE BIDDING PROCESS.....	21
A.	Competitive Bidding	21
B.	Bidding Notice	21
C.	Publication and Distribution of Notice.	21
D.	Addendum/Amendment	22
E.	Receipt of Sealed Bids	22
F.	Public Opening of Bids	22
G.	Evaluation of Bids.....	23
H.	Board Consideration	23
I.	Board Approval or Rejection of Bids	23
J.	Contract Administration.....	23
K.	Bidding of Annual Contracts	24
XI.	COMPETITIVE PROPOSAL PROCESS	24
A.	General.....	24
B.	Procedures for Procurement by Competitive Proposals	24
C.	Publication and Distribution of Notice	25
D.	Receipt of Proposals	25
E.	Opening of Proposals.....	26
F.	Evaluation of Proposals.	26
G.	Negotiations	26
H.	Contract Award	26
I.	Contract Administration	27

XII.	PROCUREMENT OF PROFESSIONAL SERVICES	27
A.	Professional Services over \$75,000.00	27
B.	Overview	27
C.	Notice	27
D.	Publication and Distribution of Notice.	28
E.	Receipt of Qualifications	28
F.	Evaluation Process	29
G.	Selection Process	29
H.	Next Most Highly Qualified Provider.....	29
XIII.	EXEMPTIONS TO THE COMPETITIVE PURCHASING PROCESS.....	29
A.	Section 49.278 of the Texas Water Code.....	29
XIV.	PROCUREMENT OF GOODS/SERVICES UNDER FEDERAL LAW	30
A.	Compliance with Federal Law	30
B.	Deviation from Standards	30

I. PURPOSE

Purchasing is an essential governmental and fiscal function of the Orange County Drainage District (“District”). The District finds that the integrity and efficiency of its purchasing process constitutes a crucial component of its fiduciary duty to the taxpayers of Orange County, Texas and the public at large. The District recognizes that even the perception of impropriety threatens the public's confidence in this political subdivision. Therefore, the District, acting through its Board of Directors and management officials, must ensure compliance with a high standard of professional ethics with respect to all who participate in, or can influence, the purchasing and procurement of goods and services on behalf of the District.

This Purchasing Policies and Procurement Manual (the “Purchasing Manual” or the “Manual”) is intended to provide employees with a basic understanding of purchasing activities, the applicable federal and state laws, rules and regulations, as well as the role of the District’s Purchaser (“Purchaser”) and other District employees who have involvement in the purchasing process. The adoption of this Purchasing Manual and the approval of any subsequent revisions by the District’s Board of Directors (“Board of Directors”) shall authorize the policies and procedures set forth herein for official use in District business.

II. MISSION AND GOALS

A. Mission. The Mission of the District with respect to procurement of goods and services is to obtain quality goods and services needed by the District while:

1. Ensuring compliance with all applicable state and federal laws;
2. Protecting the interests of Orange County taxpayers without regard to any undue influence or political pressures; and
3. Providing all vendors, including, but not limited, to Historically Underutilized Businesses, equal access to the competitive process for the acquisition of goods and services by the District.

B. Goals. When making purchasing decisions, the District shall ensure that it is:

1. Purchasing the proper goods and services;
2. Obtaining the best possible price for the goods or services in a timely manner without sacrificing the minimum standard of acceptable quality;
3. Ensuring a continuing supply of goods and services are available where and when needed; and
4. Guarding against the misappropriation of District assets that have been acquired through the procurement process.

C. **Implementation.** The District adopts this Purchasing Manual in order to implement the following objectives:

1. **Fair Opportunity to Compete.** The District desires to offer responsible bidders, vendors and service providers a fair opportunity to compete for the District's business by adhering to the statutory requirements regarding competitive bids and proposals, and by complying with the Purchasing Manual;
2. **Safeguard Public Funds.** The District shall endeavor to receive the best value when expending public funds;
3. **Uphold Fiduciary Duty.** The District prohibits the expenditure of public funds where the same might intentionally or knowingly enrich elected officials or employees, or to confer favors. The District believes that the adoption and implementation of the code of ethics set forth herein will accomplish this purpose;
4. **Historically Underutilized Businesses.** The District will take affirmative steps to provide an equal opportunity for Historically Underutilized Businesses (as that term is defined by federal law) to compete in the contract award process. In this regard, the District shall require that contractors and subcontractors use their best efforts to utilize HUBs whenever feasible; and
5. **Local Vendors.** When legally feasible and consistent with this Purchasing Manual, the District shall endeavor to utilize local suppliers of goods and services.

III. DEFINITIONS

For the purposes of this Purchasing Manual, the following words have these meanings:

1. **Advertisement.** A public notice in a newspaper of countywide general circulation containing information about a solicitation in compliance with legal requirements. The term can also refer to advertisements placed with online vendors provided the online advertisement is authorized by law.
2. **Amendment/Addendum.** A document used to change the provisions of a Solicitation.
3. **Annual Term Contract.** A recurring contract for goods or services, usually effective for twelve (12) months.
4. **District Purchaser.** A District employee that has been designated by the General Manager who is primarily responsible for the procurement of goods and services on behalf of the District. The District Purchaser may also be referred to as the "Purchaser."
5. **Assistant Purchaser.** The District employee who has been designated by the Purchaser, and approved by the General Manager or Assistant General Manager, to assist the Purchaser in the procurement of goods and services on behalf of the District.

6. **Best Value.** A method of evaluating price that includes an evaluation based on the total life cycle cost of the item or service. Best value is the best and lowest overall life cycle cost proposal taking into consideration various factors depending on what is being procured.
7. **Bid Bond.** A deposit required of bidders to protect the District if a low bidder withdraws its bid or fails to enter into a contract. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on a US Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.
8. **Bidder.** A vendor that submits a bid, including anyone who acts on behalf of the vendor that submits a bid, such as agents, employees, and representatives.
9. **Bidders List.** An automated list of vendors who have stated in writing an interest in submitting bids for particular categories of goods and services.
10. **Blanket Purchase Order.** A purchase order issued without unit pricing, limited to a specific amount. A blanket purchase order is normally used when there is a recurring need for expendable goods, and contains multiple delivery dates over a period of time.
11. **Change Order.** A document used in construction contracts to change the contract by modifying the specifications, increasing or decreasing the cost, or adjusting the time for performance that changes the goods or services to be delivered.
12. **Board of Directors.** The Board of Directors of the Orange County Drainage District.
13. **Competitive Bidding.** The process of seeking and obtaining sealed bids that allow interested vendors to compete with each other to provide goods or services.
14. **Competitive Proposal Process.** The process of seeking and obtaining sealed proposals that allows available vendors to compete with each other to provide goods and services.
15. **Component Purchases.** A series of purchases of component parts of goods that are normally purchased as a whole.
16. **Consultant.** A person who provides or proposes to provide advice and counsel in a specialized area.
17. **Contract.** A formal, written agreement executed by the District and a vendor containing the terms and conditions under which goods or services are furnished to the District which commits the District's funds.
18. **Contractor.** A vendor who has been awarded a contract by the District.

19. **Cooperative Purchasing Program.** Any purchasing cooperative, as authorized by Chapter 791 of the Texas Government Code, of which the District is a member, through which the District may purchase goods or services, and which satisfies any state law that requires the District to seek competitive bids for the purchase of goods or services.
20. **Interlocal Government Agreement.** An agreement, as authorized by Chapter 791 of the Texas Government Code, between the District and another governmental entity through which the District may purchase goods or services, and which satisfies any law that requires the District to seek competitive bids for the purchase of goods or services.
21. **Design-Build Contract.** A project delivery method by which the District contracts with a single entity to provide both the design and construction services for the construction, rehabilitation, alteration, or repair of a facility.
22. **Department.** All District departments or divisions of any kind whether the same are required by statute or are created by the Board of Directors or the Managers of the District.
23. **Disaster.** The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action.
24. **Emergency Purchase.** An item or service that must be purchased in a case of public calamity, or which must be made in other emergency situations authorized by law.
25. **Employee.** An employee of the District.
26. **Goods.** Any personal property purchased by the District, including equipment, supplies, material, and component or repair parts.
27. **High Technology Item.** A service, equipment, or good of highly technical nature, including data processing equipment and software; telecommunications, radio, and microwave systems; electronic distributed control systems; and technical services related to those items.
28. **Historically Underutilized Business (HUB).** A Historically Underutilized Business (“HUB”) is a business that is formed for the purpose of making a profit and that is otherwise a legally recognized business organization under the laws of Texas. A HUB must be at least 51 percent owned by one or more persons who are economically disadvantaged due to their identification as members of certain groups. The groups include Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, Service Disabled Veterans, Women and any other group recognized by the State of Texas or applicable federal agency as a HUB. These individuals must demonstrate active participation in the

control, operation, and management of the business' affairs. A HUB must also have its principal place of business in the State of Texas.

29. **Invitation for Bid (IFB).** The specifications and formal bidding documents requesting pricing for a specified good or service which has been advertised in accordance with Chapter 49 of the Texas Water Code or any other applicable federal or state statute, rule or regulation as the case may be.
30. **Item.** Any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items. This does not include professional services as defined by Texas Government Code, Section 2254.002.
31. **Lease.** A contract for the use of real or personal property for a period of time in return for a specified compensation.
32. **Lowest Responsible Bid.** The offer from a bidder who submits the lowest and best price meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid and includes any related costs to the District in a total cost concept and who has the financial and practical ability to perform the contract and whose past performance indicates the ability to comply with the contract.
33. **Manager.** The District's General Manager or Assistant General Manager.
34. **Modification.** A document used to change the provisions of a contract.
35. **Offers.** Bids, proposals and quotes made by businesses to supply goods or services.
36. **Other Professional Services.** Those services usually referred to as a professional service, but not specifically listed in the Professional Services Procurement Act, which requires specialized technical skill and expertise; labor and skill which is predominantly mental or intellectual, including computer programmers, lawyers, and facilitators.
37. **Payment Bond.** A surety bond executed in connection with a contract that secures the payment obligations of a Contractor as required by Texas Water Code §49.275 or any other applicable law.
38. **Performance Bond.** A surety bond that provides assurance of a Contractor's performance of a certain contract as required by Texas Water Code §49.275 or any other applicable law.
39. **Professional Services.** Services directly related to professional practices as defined by the Professional Services Procurement Act, including those services within the scope of the practice of accounting; architecture; optometry; medicine; land surveying; and professional engineering.

40. **Proprietary Information.** Information provided in responses to solicitations to which a vendor claims ownership or exclusive rights and which may be protected from disclosure under Chapter 552 of the Texas Government Code ("Texas Public Information Act").
41. **Request for Proposals (RFP).** A document that is a written request for proposals for goods or services the District intends to acquire by means of the competitive sealed proposal procedure, similar to the Invitation for Bid procurement process; however, instead of competitive sealed bids, a negotiation phase is included and a best and final offer is permitted.
42. **Request for Qualifications (RFQ).** A document that requests details about the qualifications of professionals whose services must be obtained in compliance with the Professional Services Procurement Act, and Chapter 2269 of the Texas Government Code.
43. **Request for Services (RFS).** A document that requests information about qualifications and details of services to be provided and costs for other professional services that are not covered by the Professional Services Procurement Act.
44. **Sealed Bids.** The offers in response to an Invitation for Bids that is advertised in a newspaper and/or online, if authorized by law, and submitted to the Purchasing Office in a manner that conceals the price.
45. **Separate Purchases.** Acquisitions made in a series of different orders for goods and services that in normal purchasing practices would be purchased in a single order.
46. **Sequential Purchases.** Acquisitions made over a period of time that in normal purchasing practices would be made at one time.
47. **Services.** The furnishing of labor by a contractor that includes all work or labor performed for the District on an independent contractor basis, including maintenance, construction, manual, clerical, personal or professional services.
48. **Shop Foreman.** The District employee that has been designated by the General Manager as the District Shop Foreman.
49. **Sole Source Good or Service.** A good or service that can be obtained from only one source or for which it is otherwise impracticable to obtain competition. *See*, Texas Water Code §49.278(a)(4).
50. **Solicitation.** A document, such as an Invitation for Bid, Request for Proposal, Request for Offers, Request for Qualifications, or Reverse Auction issued by the Purchaser to solicit a response from vendors to provide goods or services needed by the District.
51. **Superintendent.** The District employee who has been designated by the General Manager as the District's Superintendent.

- 52. **Specification.** A total description of a good or service to be purchased by the District along with other requirements necessary to provide satisfactory performance of the contract and which may include requirements for testing, inspection, acceptance, and preparing any good or service for delivery, or preparing or installing it for use.
- 53. **Vendor.** A business entity or individual that seeks to have or has a contract to provide goods or services to the District.

IV. IMPLEMENTATION AND ENFORCEMENT

- A. **Distribution.** This Purchasing Manual will be distributed to all District employees who are involved in the purchasing or procurement process, and shall be made available to the general public on the District's website. The District's Purchaser shall be responsible for ensuring that this manual (and any revisions thereto) is available to any person requesting the same.
- B. **Enforcement.** The Purchaser shall be responsible for implementing and enforcing the policies and procedures set forth in this manual as follows:
 - 1. **Duties of the Purchaser.** The Purchaser, in consultation with the General Manager and Assistant General Manager, shall be charged with implementing and enforcing the policies and procedures set forth in this Purchasing Manual.
 - 2. **Refusal to Pay.** Where the District, or its agents, determine that a violation of any of the policies and procedures in this manual has occurred, the District, or its General Manager or Assistant General Manager in their sole exercise of discretion, may initiate disciplinary action as set forth herein and/or refuse to pay for any good or service procured in violation of these policies and procedures.
 - 3. **Authority of Board.** The Board of Directors shall have the authority, or in specific situations determined to be exceptional as authorized by law, to waive or override the policies and procedures in this Purchasing Manual, providing that the District's action is in compliance with all applicable laws.
- C. **Revisions.** This Manual is to serve as a permanent and up-to-date guide to District purchasing policies and procedures. The District will make such changes as necessary to address any change in circumstances as determined by the Board of Directors or as required by law.
- D. **Recommendations.** District employees are encouraged to make recommendations for revisions that may need to be made from time to time.
- E. **Maintenance of Purchasing Records.** It is the policy of the District to maintain its purchasing records to demonstrate compliance with this Policies and Procurement Manual as well as applicable state or federal law, rules and regulations. Accordingly, the District

shall maintain original or electronic copies of its purchasing records for the time period prescribed by law.

V. CODE OF ETHICS

- A. Statement of Policy.** It is the policy of the District to impose a special responsibility upon all personnel who are entrusted with the expenditure of the District's funds. The fiduciary nature of purchasing requires that all employees remain independent, free of obligation or suspicion, and completely fair and impartial.
- B. Written Code of Ethics.** The District maintains the integrity and credibility of the District's purchasing program through a clear set of policies, procedures and guidelines which govern the behavior of all employees engaged in the purchasing program.
- C. Prohibitions Applicable To District Personnel.** District personnel shall be prohibited from:
- 1.** Participating in work on a contract by taking action as an employee or agent of a vendor, or prospective vendor, in rendering a benefit through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment; and
 - 2.** Soliciting or accepting anything of value from an actual or potential vendor; being employed by, or agreeing to work for, a vendor or potential vendor; or knowingly disclosing confidential information for personal gain.

Where any District employee comes into possession of anything of value (other than an item of *de minimis* value) from a vendor, or prospective vendor, he or she must immediately surrender the same to the District unless it is practical to return the item of value to the vendor, or prospective vendor.

- D. Conflict Disclosure Statement Required of Employees.** District personnel shall file a Local Government Officer Conflicts Disclosure Statement (Form CIS) in accordance with Chapter 176 of the Texas Local Government Code with the General Manager or Assistant General Manager not later than 5:00 p.m. on the seventh (7th) business day after the date on which the employee becomes aware of the facts that require the filing of this statement.
- E. Prohibitions Applicable to Vendors (or Potential Vendors).** Vendors (or potential vendors) are prohibited from offering to give, promising to give or giving anything of value to any employee of the District. Vendors must prepare and file a Conflict of Interest Questionnaire (Form 1295) with the District if required by Chapter 176 of the Texas Local Government Code.
- F. Remedial Action for Violation of Code of Ethics.** The District imposes the following affirmative duties upon each District employee in order to enforce this Code of Ethics:

1. **Duty to Report.** The District requires that all employees and/or vendors shall immediately report, in writing, any actual or suspected violation of these policies and procedures to the General Manager or Assistant General Manager. The General Manager or Assistant General Manager shall provide the reporting party with written instructions as to the response and/or disposition of the matter; and
2. **Remedial Action for Violation.** If an actual violation occurs, or if an employee or vendor knowingly failed to disclose a violation, the party shall be disciplined up to, and including, termination and prosecution as the case may be. Furthermore, where the breach of this policy involves acts or omissions of a Vendor, the Vendor may be barred from receiving future contracts and/or the District reserves the right to terminate any, or all, existing contracts with the offending vendor.

VI. PURCHASING AUTHORITY AND PROCEDURES

A. **General Statement of Policy.** It is the policy of the District to:

1. Seek the best quality, lowest priced goods and services that meet the needs of the District and its personnel;
2. Provide all responsible Vendors and Contractors with equitable access to servicing the needs of the District and its personnel through competitive acquisition of goods and services;
3. Comply with all Federal and State Laws that apply to District purchasing, and comply with the policies and procedures outlined in this manual;
4. Manage District assets and inventory so that replacement costs are minimized and the District can account for all assets;
5. Dispose of all surpluses, salvage, seized and abandoned property in a manner that both provides the most benefit to the taxpayers of the District and complies with all applicable statutes, rules and regulations; and
6. Ensure that goods and services are ordered and received in such a timely manner so as to minimize repair time for District vehicles and equipment.

B. **Texas Water Code.** The provisions of Chapter 49 of the Texas Water Code including, but not limited to, Sections 49.271 and 49.273 as are applicable to the purchasing and procurement of goods and services by this District, are incorporated into this manual by reference as if set forth fully herein.

C. **Purchasing Authority.** The District's Purchaser, with the assistance of other District personnel as set forth below, shall purchase all equipment, materials, parts, supplies,

services and all other goods needed by the District, subject to, and in accordance with this Manual.

1. **Purchase Orders.** Goods or services will not be obtained until a Purchase Order is prepared by the Purchaser, and approved and signed by either the Purchaser and/or a Manager. The Purchaser shall not issue a Purchase Order until a written requisition for good(s) or service(s) is received by the Purchaser from a Manager, Superintendent, Supervisor, Surveyor or Foreman. The Purchaser has authority to approve and sign a Purchase Order that involves an expenditure of an amount not more than One Thousand Five Hundred Dollars (\$1,500.00), or such greater amount if approved in writing by a Manager. For the expenditure of an amount greater than One Thousand Five Hundred Dollars (\$1,500.00), the Purchaser shall prepare a Purchase Order for approval by a Manager. The General Manager and Assistant General Manager shall have authority to approve and sign a Purchase Order involving an expenditure of any amount, provided that such Purchase Order has been issued in compliance with this Manual and state law.
2. **Purchases in any Amount.** In addition to the policies and procedures set forth herein, for all purchases, regardless of the amount of the expenditure, the District shall endeavor to obtain best value.
3. **Purchases in an Amount Less Than \$750.00.** For all purchases involving an expenditure of an amount less than \$750, at least one verbal or on-line quote shall be obtained from the selected vendor. Nothing shall prohibit the Purchaser or Assistant Purchaser from obtaining additional online, verbal or written quotes, time and circumstances permitting.
4. **Purchases Greater Than \$750.00.** In addition to the policies and procedures set forth below, for all purchases involving an expenditure of an amount greater than \$750, the District Purchaser shall, if practical, determine whether or not competitive pricing through any Cooperative Purchasing Programs of which the District is a member, or whether or not an Interlocal Government Agreement with another qualified governmental entity, provides the best value to the District. In the event that such competitive pricing provides best value, the purchase shall be made through a Cooperative Purchasing Program or Interlocal Government Agreement in accordance with Chapter 791 of the Texas Government Code.
5. **Purchases Greater Than \$750 But Less Than \$2,500.00.** For all purchases involving an expenditure of an amount greater than \$750, but less than \$2,500, at least two (2) verbal or online quotes shall be solicited, one of which is the lowest and best.
6. **Purchases Greater Than \$2,500.00 But Less Than \$25,000.00.** For all purchases involving an expenditure of an amount greater than \$2,500, but less than \$25,000, at least three (3) written quotes shall be solicited, one of which is the lowest and best.

7. **Purchases Greater Than \$25,000.00 But Less Than \$75,000.00.** For all purchases involving an expenditure of an amount greater than \$25,000, but less than \$75,000, written quotes or offers based upon uniform written specifications shall be obtained from at least three (3) vendors; and
8. **Purchases Greater Than \$75,000.00.** For all purchases involving an expenditure of an amount greater than \$75,000, except where expressly exempted, the purchases must be accomplished through the formal competitive bid process or the request for proposal process (collectively referred to as “Competitive Bidding”) with detailed written specifications as required by State law (see details below). However, notwithstanding any other provision herein, a Manager, upon the recommendation of the Purchaser and/or other District staff, may authorize in writing a purchase that involves the expenditure of an amount greater than \$75,000 through an available Cooperative Purchasing Program of which the District is a member, and/or Interlocal Government Agreement with another qualified governmental entity, which authorizes the purchase in accordance with Chapter 791 of the Texas Government Code.

D. Miscellaneous Duties/Authority of the Purchaser. Subject to the provisions set forth above, the Purchaser shall perform the following additional duties as may be assigned and modified by the General Manager or the Assistant General Manager.

1. **General Purchasing Obligation.** The Purchaser shall, in accordance with the standards set forth in this Manual, purchase all supplies, materials, services and equipment, and shall contract for all repairs to property used by the District or a department or employee. Accordingly, no other person may make the purchase of the goods or services, or make a contract for repairs unless specifically authorized by the General Manager or Assistant General Manager, or unless expressly authorized in this Manual.
2. **Supervise Competitive Bidding.** The Purchaser or Assistant Purchaser shall supervise all purchases made on competitive bids and shall see that all purchased goods are delivered to the proper department in accordance with the underlying contract.
3. **Preparation of Bid Specifications.** The Purchaser, with the assistance of the Assistant Purchaser, Shop Foreman or other District employee or consultant, shall prepare the bid or proposal specifications for materials, supplies, and equipment to be purchased and shall be responsible for subsequent solicitation and evaluation of formal bids and proposals for any item or items that would require expenditure in excess of \$75,000.
4. **Competitive Bidding.** Specifications, which shall be the basis of sealed bids or sealed proposals, shall be developed by the Purchaser to allow for competitive bidding. The Purchaser shall not write bid specifications which are intended to

circumvent the legal procurement process or otherwise exclude a legitimate competitor. The Purchaser shall not specify brand names of products or services unless the Purchaser also includes a provision allowing a vendor to submit a bid reflecting competing brands of equal quality.

5. **Selection of Vendors.** In the case of formal or informal competitive bids or proposals, the evaluation of the bids and proposals as well as the selection of vendors shall be made with the intention to obtain the best value for the money spent.
6. **Disposition of Surplus Property.** Where the District determines that it possesses real or personal property that is no longer needed by the District, or has been deemed to be surplus, the Purchaser shall dispose of the property in accordance with Section 49.226 of the Texas Water Code, or other applicable state law.
7. **Approval of Purchase Order Prepared by Others.** Following receipt of the goods or services which are the subject of such Purchase Orders, the Purchaser shall review all Purchase Orders that have been prepared and signed by the Assistant Purchaser or Shop Foreman. Afterwards, such Purchase Orders shall be provided to the General Manager or Assistant General Manager for payment approval.

E. Purchase Order and Signature Authority. The following persons shall have the authority provided and specified below with respect to the purchase of goods and services:

1. The Purchaser has the authority to issue and sign all Purchase Orders. However, all Purchase Orders that involve the expenditure of an amount in excess of One Thousand Five Hundred Dollars (\$1,500.00) must also be approved and signed by either the General Manager or Assistant General Manager.
2. The Office Manager and Office Administrative Assistant shall each have the authority to issue and sign Purchase Orders for office supplies and for the payment of recurring monthly bills, provided that either the General Manager or Assistant General Manager also signs such Purchase Order.
3. The Assistant Purchaser shall have the authority to issue and sign a Purchase Order involving the expenditure of an amount not greater than Seven Hundred Fifty Dollars (\$750.00), provided that the Purchase Order and related expenditure is in compliance with all provisions set forth in this Purchasing Policies and Procurement Manual.
4. The Shop Foreman shall have authority to issue and sign a Purchase Order involving the expenditure of an amount not greater than Seven Hundred Fifty Dollars (\$750.00), provided that the Purchase Order and related expenditure is in compliance with all provisions set forth in this Purchasing Policies and Procurement Manual.

5. All checks issued by the District must have two signatures, one by either the General Manager or Assistant General Manager, and the other by a member of the Board of Directors.
6. The following individuals have authority to make purchases for goods and services by use of the District's credit cards:
 - a. The Purchaser, Assistant Purchaser, Superintendent, Shop Foreman, Manager, Office Manager, Office Administrative Assistant (or their designees for a specific purchase), providing that Purchase Orders are created, issued and executed in advance of, or contemporaneously with, the purchase, or as soon thereafter as is practicable, and further providing that such purchases are made in full compliance with the provisions of this Manual.
 - b. The General Manager, Assistant General Manager, Office Manager, or a member of the Board of Directors, provided that such purchase is a travel-related expense associated with the business of the District, including, but not limited to lodging, meals, and fuel.
 - c. Any other employee of the District who is specifically authorized by the General Manager or Assistant General Manager to make a specific purchase in any amount, provided that such purchase is made in full compliance with this Manual.

VII. GENERAL PURCHASING PROCEDURES

- A. **General Provisions.** The following provisions are applicable to all purchases and procurement of goods and services on behalf of the District.
 1. The District will not be obligated to purchase goods that are delivered for use on a trial basis.
 2. The District will not engage in any purchasing or procurement practice that has the effect of avoiding or circumventing any applicable statute, rule or regulation including, but not limited to: (a) component purchases, (b) separate purchases, and (c) sequential purchases.
 3. The District shall issue a Purchase Order before, or contemporaneously with, the acquisition of all goods and services. Any District employee obligating the District for an expenditure of funds for goods or services, other than those items necessary to effectuate field repairs of machinery or equipment, prior to securing a Purchase Order may be held personally responsible for the payment.

- 4 District employees shall not purchase goods or services for their own personal benefit regardless of circumstances.
- B. Bidders' Lists.** The Purchaser shall create and maintain a list of vendors who have requested that they be sent notices of solicitations. This bidders' list shall be categorized by description of goods or services procured by the District. As a courtesy to vendors and as a means of encouraging competition, the Purchaser will attempt to send a notice of each solicitation to vendors in addition to complying with the notice requirements required by statute. A prospective vendor wishing to receive notification may do so by communicating the same to the District in writing. In an effort to attract Historically Underutilized Businesses (HUBs), the District shall create and maintain a page on its website whereby qualifying vendors can register with the District to be included on solicitation lists for future District procurement opportunities. However, nothing in this section shall create an affirmative obligation upon the District to solicit a bid from a particular vendor unless the District is otherwise obligated by law to do so.
- C. After Hours/Emergency Purchases.** An emergency purchase requires a letter of justification, which will become a part of the file. The letter shall be signed by the Purchaser or a Manager, and must:
- 1 State the reason for the emergency purchase by explaining what the emergency is and/or what caused the emergency situation;
 - 2 State the financial or operational damage that will occur if needs are not satisfied immediately. The person submitting the letter of justification must be specific. General statements that an unnamed or speculative loss will occur will not be sufficient to authorize an emergency expenditure under this section; and
 - 3 State the reasons why the purchase was unforeseen or could not be anticipated so that items could have been procured by the District in the ordinary course of business.
- D. Interlocal Agreements.** All Interlocal agreements involving the purchase of goods, services, repairs, or maintenance agreements must be approved in writing by the Purchaser or a Manager before being submitted to the District's Board of Directors for ultimate approval. Interlocal agreements may not be used where the procurement of goods or services is made with funds supplied by the federal government unless otherwise approved by the Board of Directors in accordance with all applicable federal and state statutes, rules and regulations.
- E. Bonding Requirements.** The Purchaser shall require prospective vendors to submit Bid Bonds, Performance Bonds and Payment Bonds subject to the following conditions:
- 1 **Bid Bonds.** Unless otherwise required by state or federal law, bid bonds will not be required for contracts that are valued at less than \$75,000.00. Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by

a state agency. If the Purchaser determines that a bid bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a bid bond in the amount of two percent (2%) of the contract price is required. However, the Purchaser may, in the exercise of his or her discretion, or pursuant to the action of the Board of Directors, require a bond in an amount greater than two percent (2%). All such bonds must be executed by a surety company authorized to do business in Texas.

- 2 **Performance and Payment Bonds.** The District shall require a performance and/or payment bond on all public works as required by the laws of the State of Texas.
- 3 **Discretionary Authority.** Nothing in this section shall prohibit the Purchaser, acting with the advice and consent of a Manager, from requiring a bid, performance or payment bond for a purchase of goods or services for less than \$75,000 where the Purchaser and/or Manager, in the exercise of their professional judgement, deem such bonds to be in the best interest of the District.

- F. **Savings Clause.** It is the clear policy of the District to comply with all applicable state and federal laws, rules and regulations that are applicable to procurement of goods and services by the District. To the extent that any provision of this Manual conflicts with any federal or state statute, rule or regulation, the Purchaser is directed to follow the applicable law and disregard any part of this Manual that conflicts with clearly established law, a rule, or regulation, whether existing now or as amended in the future.

VIII. VENDOR QUALIFICATION AND REGISTRATION

- A. **Statement of Policy.** It is the policy of the District to select vendors without regard to race, gender, ethnicity, or geographic location. The District shall establish and maintain a portal on the District website to allow prospective vendors to submit information to assist the District in contacting the vendor regarding procurement opportunities.
- B. **SAM Registration.** Vendors doing business with the District are required to be registered with The System for Award Management (SAM), with an "active" status. There is NO fee to register for this site. Entities may register at no cost directly from the SAM website at: <https://www.sam.gov>.
- C. **HUB Registration.** Vendors that have been designated as Historically Underutilized Businesses are encouraged to register with the District so that the District can include such businesses on its solicitation lists. All registrants must include a certificate, issued by the State of Texas, evidencing the business' HUB status.
- D. **Ineligibility.** With respect to projects, other than a "design build contract", a vendor shall be ineligible to submit bids, proposals or qualifications where the vendor materially assisted the District (whether for compensation or not) in formulating the specifications set forth in any competitive bid, request for proposal or request for qualification. However, the District

may enter into a separate contract or agreement with the vendor to compensate the vendor for consultation services rendered so long as the contract or agreement is consummated in accordance with this manual.

IX. DEVELOPMENT OF SPECIFICATIONS

- A. Purpose.** The purpose of any specification is to provide purchasing personnel with clear guidelines from which to purchase, and to provide vendors with firm criteria of a minimum acceptable standard for goods or services including: (1) establishing the minimum acceptability of the goods or services; (2) promoting competitive bidding; (3) providing for reasonable testing and inspection for acceptability of the goods or services; and (4) ensuring a fair award to the responsible bidder that submits the lowest and best bid.
- B. Specifications.** When developing specifications for the prospective purchase of goods and services, the Purchaser shall:
1. Ensure that the specifications include a concise description of goods or services that the District intends to procure; and
 2. If applicable, include requirements for testing, inspection, or preparing any goods or services for delivery, or preparing or installing them for use.
- C. Preparation of Specifications.** The District shall use reasonable efforts to develop specifications that maximize the opportunity for vendors to engage in meaningful competitive bidding. The Purchaser or Assistant Purchaser shall not write or accept specifications which, by design, exclude legitimate competitors. The Purchaser shall not use brand names unless the item to be purchased is a captive replacement part or unless a disclaimer is included which opens the specification to competing brands of equal quality.
- D. Approval of Specifications.** Specifications may be proposed by a District department, employee or consultant. The Purchaser, with the consent of the General Manager and/or Assistant General Manager shall accept and approve the final specifications for a desired good or service. Any purchases that were not approved in the budget process will be submitted to the District Board of Director's before specifications are prepared and advertised.
- E. Captive Replacement Parts.** The District recognizes that some manufacturers of heavy equipment require the use of original equipment manufactured ("OEM") replacement parts in order to maintain a manufacturer's warranty applicable to such equipment. The District also recognizes that some manufacturers have not released patents on some parts that are required for repair of District equipment. In the event that the Purchaser makes a good faith determination that a part is a captive replacement part, the Purchaser shall certify this determination on the Purchaser Order. Thereafter, the Purchaser shall, from time to time, make additional inquiries to determine if suitable non OEM parts are available for purchase that would provide a better value to the District.

X. COMPETITIVE BIDDING PROCESS

A. Competitive Bidding. Unless an exemption applies, or as otherwise allowed in this Manual, all purchases and procurement of goods and services exceeding \$75,000 shall be made according to the statutory competitive bidding provisions set forth or referenced in this Manual.

B. Bidding Notice. The Bidding Notice must include:

1. The specifications describing the item to be purchased or a statement of where the specifications may be obtained;
2. The date, time and place by for receiving and opening the sealed bids, and the name and position of the District employee to whom the bids are to be sent;
3. The type of bond, if any, required by the bidder. If unit pricing is required, the District will specify approximate quantities estimated on the best available information. The Purchaser shall explain how the lowest price will be calculated in the bid specification; and
4. After the development of specifications and preparation of the Notice to Bidders, the Purchaser or Office Manager will advertise the bid.

C. Publication and Distribution of Notice.

1. The notice of a proposed purchase must be published at least once per week for two consecutive weeks in a newspaper of general circulation in Orange County, Texas with the first publication occurring not later than the fourteenth (14th) day before the date of the opening of the sealed bids.
2. The notice must be uploaded to the Office of the Secretary of State to be included on the list of procurement opportunities for HUBs.
3. The notice should be sent to the federal Minority Business Development Administration office, via email or facsimile, to be included on that agency's website for HUB vendors.
4. The notice shall be published on the Orange County Drainage District website.
5. The notice shall be emailed or faxed to those vendors (including HUB vendors) who have filed a request with the District to be notified of procurement opportunities that involve goods and services provided by that vendor.

D. Addendum/Amendment. The bid opening date on the notice may be extended if an error is discovered, or the nature of the goods and services requires an extension. The Purchaser may amend specifications to clarify the original intent or to correct clerical errors if:

1. Inquiries about the meaning of the specifications indicate the need for such an amendment;
2. The changes are so immaterial so as to not likely matter to the vendor in determining price or ability to respond;
3. There is no material change to the quantity, or delivery requirements;
4. The amendment does not materially change the scope of the specifications; and
5. There are at least three (3) business days between the date of the amendment and the opening date specified in the notice.

E. Receipt of Sealed Bids. The District adopts the following procedures when receiving sealed bids:

1. All bids shall be received by the Office Manager in the District's Administration Building, and immediately made available to the Purchaser.
2. The outer envelope containing the sealed bids will be immediately stamped with the time and date received.
3. No bids will be received after the deadline established by the District and communicated in the notice or advertisement concerning the procurement. All bids received after the deadline will be returned unopened to the bidder with a letter from the Purchaser notifying the bidder that the submitted bid was received after the due date and time.
4. After the sealed bids are received, the sealed bids will be secured in the administrative offices of the District for safekeeping until the bid opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchaser, or a Manager in a public forum.
5. In the event a sealed bid is opened inadvertently, the General Manager, Assistant General Manager or Office Manager will witness that the details of the bid, especially the price, were not reviewed and that the bid was sealed again immediately, and the incident documented.

F. Public Opening of Bids. Sealed bids will be opened publicly by the Purchaser or a Manager, and will be documented. The sealed bids shall be opened on the date, time and place specified in the notice. The opening process shall be undertaken in a manner that avoids the appearance of impropriety or reveals confidential information. Therefore, the

District believes that having sealed bids publicly received and read should be reasonably sufficient to avoid the appearance of impropriety.

G. Evaluation of Bids. Unless otherwise instructed by the Board of Directors, the Purchaser will evaluate all bids, with such assistance as he or she may deem reasonably necessary in the exercise of his or her professional judgement. Upon doing so, the Purchaser shall make a determination and recommendation as to which bid represents the best and lowest responsible bid and communicate the same to the Board of Directors. In this regard, the Purchaser shall consider:

1. The relative price of the bids, including the cost of repair and maintenance if heavy equipment is the subject of the bid.
2. The suitability of the goods and services for the purpose set forth in the specifications.
3. The responsibility of the vendor, including the vendor's financial and practical ability to perform the contract.
4. The vendor's safety record if applicable.

H. Board Consideration. The Purchaser will submit tabulation, evaluation, and recommendations for award as directed by the Board of Directors by placing an item on the Board of Directors' Agenda for consideration and award of the contract. When the lowest priced bid is not the best bid, the Board may require that the Purchaser, or his or her designee, state and document a clear justification for not selecting the lowest bid.

I. Board Approval or Rejection of Bids. The District's Board of Directors reserves the right to either approve the recommendation or reject all bids and authorize the Purchaser to re-solicit the goods and/or services, or alternatively, to procure the goods or services through a Cooperative Purchasing Program of which the District is a member, or through an Interlocal government agreement if such an option is available to the District.

J. Contract Administration. Where the contract has been awarded for the benefit of a specific department of the District, the department head shall be responsible for monitoring and documenting the performance/compliance with the specifications of the goods or services procured under the contract.

1. All District personnel are charged with the affirmative duty to report any instances of material non-compliance to the Purchaser. Upon receipt of information indicating that a vendor has failed to perform as agreed, the Purchaser, or his or her designee, shall notify the Vendor of the issues regarding the failure to comply.
2. If, after clarification, the Vendor complies with expected performance standards, no further documentation will be required by the Purchaser. If continued poor performance or non-compliance of the goods or services is evidenced, the Purchaser

shall initiate corrective action with the Vendor, following consultation with a Manager.

- K. Bidding of Annual Contracts.** The Purchaser shall monitor the expiration dates of all contracts and contact user departments to determine if annual contracts need to be re-solicited. The department will advise the Purchaser of any additions, deletions, or corrections needed or desired with respect to the re-solicitation of any contracts.

XI. COMPETITIVE PROPOSAL PROCESS

A. General.

- 1. Notice.** Competitive proposals may be solicited through a Request for Proposal ("RFP"). Formal, sealed RFPs may be used to procure insurance, high technology goods and services, consulting services and other special services exceeding \$75,000. Notwithstanding the foregoing, the Manager may authorize the use of this RFP procedure for contracts that are less than \$75,000 where he or she deems the procedure to be in the best interest of the District considering its fiscal responsibility to the taxpayers.
- 2. Solicitations.** The RFP will solicit proposals from Vendors in response to the District's requirements and contractual terms and conditions. A formal contract must be approved by the Board of Directors.
- 3. High Technology Defined.** For purposes of this section, the definition of "high technology" goods or services shall be those goods or services of a highly technical nature, including, but not limited to: (a) data processing equipment and software and firmware used in conjunction with data processing equipment; (b) telecommunications, radio, and microwave systems; (c) electronic distributed control systems, including building energy management systems; and (d) technical services related to those goods and services.

- B. Procedures for Procurement by Competitive Proposals.** Competitive proposals for insurance, high technology goods and services and special services will be accomplished as follows:

- 1. Notice.** After the development of the RFP, the Purchaser will publish a notice of the RFP, unless authorization by the District Board of Directors of the RFP is first required. The notice must include:
 - a.** The specifications describing the goods and services to be purchased, or a statement of where the specifications may be obtained;
 - b.** The time and place for receiving and opening RFPs and to whom the RFPs are to be sent; and

- c. The type of bond required (if necessary) of the Vendor.
2. **Evaluation Criteria.** The RFP must specify the relative importance of price and other evaluation criteria.

C. Publication and Distribution of Notice.

1. The notice must be published at least once per week for two consecutive weeks in a newspaper of general circulation in Orange County, Texas with the first publication occurring not later than the 14th day before the date of the opening of the sealed proposals.
2. The notice must be uploaded to the Office of the Secretary of State to be included on the list of procurement opportunities for HUBs.
3. The notice must be sent to the federal Minority Business Development Administration office, by email or facsimile, to be included on that agency's website for HUB vendors.
4. The notice may be sent to the Federal Small Business Administration office, by email or facsimile, to be included on that agency's website for HUB vendors.
5. The notice must be published on the Orange County Drainage District website.
6. The notice must be emailed or faxed to those vendors (including HUB vendors) who have filed a request with the District to be notified of procurement opportunities that involve goods and services provided by that vendor.

D. Receipt of Proposals. The District adopts the following procedures when receiving sealed proposals:

1. All sealed proposals will be received by the Office Manager in the District's Administration Building, and immediately made available to the Purchaser.
2. The outer envelope containing the sealed proposals will be immediately stamped with the time and date received.
3. No proposals will be received after the deadline established by the District and communicated in the notice or advertisement concerning the procurement. All proposals received after the deadline will be returned unopened to the Vendor with a letter from the Purchaser notifying the offeror that the submitted proposal was received after the due date and time.
4. After the sealed proposals are received, the sealed proposals shall be secured in the District's Administrative Office until the proposal's opening date. The proposals

are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchaser, or a Manager in a public forum.

5. In the event a sealed proposal is opened inadvertently, the General Manager, Assistant General Manager or Office Manager will affirm that the details of the proposal, especially the price, were not reviewed and the proposal was sealed again immediately, and the incident documented.
6. The District directs that all responsible parties conduct this process in a manner that avoids any appearance of impropriety or which reveals confidential information. The District finds, as a matter of policy, that having the proposals publicly received and recorded should inhibit any perception of impropriety.

E. Opening of Proposals.

1. Sealed proposals will be opened publicly by the Purchaser or a Manager, and will be documented. The sealed proposals shall be opened on the date, time and place specified in the notice. The opening process shall be undertaken in a manner that avoids the appearance of impropriety or reveals confidential information. Furthermore, the proposals shall be kept secret during the process of negotiation.
2. All proposals that have been submitted will be available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information contained in the proposals and identified as such by the proposer if the solicitation provides for this information to be kept secret.

F. Evaluation of Proposals.

1. The Purchaser will evaluate all proposals, with assistance from the applicable department, or with the assistance of an evaluation committee appointed by the Purchaser, the Board of Directors or a Manager. Any such committee shall serve as an advisory body only and shall have no power to bind the District, or Board of Directors, to adopt the recommendation of the committee; and
2. The Purchaser or Manager shall make the recommendation of selection to the District Board of Directors based upon his/her evaluation of the proposals or the recommendation of an appointed evaluation committee.

G. Negotiations. All negotiations will be supervised by the Purchaser or Manager. Any conversations with vendors must be made in coordination with the Purchaser or Manager. Board members, District employees or individual members of a duly appointed evaluation committee shall not contact vendors without the express consent of the Purchaser or Manager in order to avoid the appearance of impropriety.

H. Contract Award. The award of the contract shall be made by the District's Board of Directors to the responsible vendor whose proposal is determined to provide the best value

to the District resulting from negotiation and taking into consideration the relative importance of price and other evaluation factors set forth in the RFP.

I. Contract Administration.

1. The department supervising the goods or services which are made the basis of the proposal will be responsible for monitoring and documenting contractor performance and compliance. All instances of material non-compliance shall be reported to the Purchaser.
2. If the Purchaser determines that the goods or services comply with expected performance standards, no further documentation will be required by the Purchaser. If poor performance or non-compliance with the contract is evidenced, the Purchaser will be responsible to initiate corrective action with the Vendor.
3. The Purchaser will take all steps necessary to obtain compliance with the contract and will consult with the District's Attorney before taking any steps toward suspension or termination of the contract.

XII. PROCUREMENT OF PROFESSIONAL SERVICES

- A. Professional Services over \$75,000.00.** Unless otherwise allowed by the applicable laws of the State of Texas, all professional services anticipated to cost over \$75,000 will be procured using the formal Request for Qualifications ("RFQ") process.
- B. Overview.** The District shall procure all professional services in accordance with The Professional Services Procurement Act, Chapter 2254 of the Texas Government Code. The term "professional services" has that meaning that is set forth in Section 2254.02 of the Texas Government Code. In accordance with the Act, the District may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price.
- C. Notice.** After the development of a RFQ, the Purchaser will publish a notice of the RFQ, unless authorization by the District's Board of Directors of the RFQ is first required. The notice must include:
1. A description of the professional services sought, or a statement of where such description may be obtained;
 2. The time and place for receiving and opening the RFQs and to whom the RFQs are to be sent; and
 3. The method of bond required (if necessary) of the Vendor.

D. Publication and Distribution of Notice.

- 1.** The notice must be published at least once per week for two consecutive weeks in a newspaper of general circulation in Orange County, Texas with the first publication occurring not later than the 14th day before the date of the opening of the sealed proposals.
- 2.** The notice must be uploaded to the Office of the Secretary of State to be included on the list of procurement opportunities for HUBs.
- 3.** The notice must be sent to the Federal Minority Business Development Administration office and Small Business Administration, by email or facsimile, to be included on that agency's website for HUB vendors.
- 4.** The notice must be published on the Orange County Drainage District website; and
- 5.** The notice must be emailed or faxed, to those vendors (including HUB vendors) who have filed a request with the District to be notified of procurement opportunities that involve goods and services provided by that vendor.

E. Receipt of Qualifications. The District adopts the following procedures when receiving sealed submittals in response to a RFQ:

- 1.** All sealed submittals will be received by the Office Manager in the District's Administration Building, and immediately made available to the Purchaser.
- 2.** The outer envelope containing the sealed submittal will be immediately stamped with the time and date received.
- 3.** No sealed submittals will be received after the deadline established by the District and communicated in the notice or advertisement concerning the RFQ. All sealed submittals received after the deadline will be returned unopened to the Vendor with a letter from the Purchaser notifying the Vendor that the sealed submittal was received after the due date and time.
- 4.** After the sealed submittals are received, the sealed submittals will be secured in the administrative offices of the District for safekeeping until the sealed submittal opening date. The submittals are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchaser, or a Manager in a public forum.
- 5.** In the event a sealed submittal is opened inadvertently, the District's General Manager, Assistant General Manager or Office Manager will witness that the

details of the submittal were not reviewed and that the submittal was sealed again immediately, and the incident documented.

- F. Evaluation Process.** The Purchaser will evaluate all sealed submittals with the assistance of an evaluation committee appointed by the Board of Directors or a Manager. Any such committee shall serve as an advisory body only and shall have no power to bind the District, or its Board of Directors, to adopt the recommendation of the committee. The Purchaser or a Manager shall communicate the results of the evaluation by the evaluation committee to the Board of Directors.
- G. Selection Process.** In accordance with Section 2254.004 of the Professional Services Procurement Act, in procuring architectural, engineering, or land surveying services, the District shall:
1. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
 2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.
- H. Next Most Highly Qualified Provider.** If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the District shall:
1. Formally end negotiations with that provider.
 2. Select the next most highly qualified provider.
 3. Attempt to negotiate a contract with that provider at a fair and reasonable price.
 4. The District shall continue the process described above to select and negotiate with providers until a contract is entered into.

XIII. EXEMPTIONS TO THE COMPETITIVE PURCHASING PROCESS

- A. Section 49.278 of the Texas Water Code.** Unless otherwise directed by the District's Board of Directors, the following goods and services are exempt from the competitive purchasing process:
1. Equipment, materials, or machinery purchased by the District at an auction that is open to the public.
 2. Contracts for personal or professional services or for a utility service operator.
 3. Contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition.

4. High technology procurements.
5. Contracts for the purchase of electricity for use by the District.
6. Contracts for services related to compliance with a state or federal construction storm water requirement, including acquisition of permits, construction, repair, and removal of temporary erosion control devices, cleaning of silt and debris from streets and storm sewers, monitoring of construction sites, and preparation and filing of all required reports.

XIV. PROCUREMENT OF GOODS/SERVICES UNDER FEDERAL LAW

- A. Compliance with Federal Law.** Notwithstanding any other provisions in this Purchasing Manual, in any and all instances in which the District is purchasing goods or services under a federal award or by using federal funds, the District shall comply with all federal law, rules and regulations, including, but not limited to all applicable portions of 2 CFR Part 200. Specifically, in the procurements of all goods or services under a federal award or involving the use of federal funds, the District shall comply with 2 CFR, Sections 200.318 thru Section 200.326, which sections are incorporated into this Manual by reference as if set forth in full, and with all other applicable federal laws, rules and regulations.
- B. Deviation from Standards.** To the extent that any provision of this Manual conflicts with any provision of 2 CFR 200.318 through 2 CFR 200.326, or any other applicable federal law, rule or regulation, those sections of federal law, rule or regulation shall prevail, and the Purchaser shall procure goods and services for the District pursuant to the aforementioned applicable federal law, rule or regulations.