

## **201.0 PURCHASING AND PROCUREMENT POLICY**

TRWD is committed to obtaining quality goods and services at a reasonable cost by generating competition whenever possible, when allowed or required by law. TRWD should adhere to the highest ethical values in the purchase and receipt of, and payment for, goods and services to support TRWD's business. TRWD shall comply fully with all state and federal purchasing laws, rules, and regulations.

**201.1 Purpose.** The purpose of this Policy is to establish authority for the purchasing function within TRWD and provide a framework that promotes and facilitates an efficient purchasing function for TRWD's acquisition of goods and services that complies with all applicable state and federal purchasing laws.

**201.2 Scope.** This Purchasing Policy applies to all TRWD employees and officials involved in the purchasing process. This Policy applies to TRWD's purchase of goods or services made with funds approved by the Board.

**201.3 Definitions.** The following definitions apply to this Purchasing Policy:

Bidder - A company that submits a bid in response to a solicitation for goods or services.

Change Order – A document used in construction contracts to change the contract by modifying the plans, specifications, or scope of work after the performance of the contract has begun and potentially increasing or decreasing the contract amount. Change Orders may also be used to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished under a contract.

Confidential/Proprietary Information - Information provided in response to a request for a bid, proposal, or qualification by a bidder (a vendor, contractor, potential vendor, or potential contractor) to which the bidder claims ownership or exclusive rights and which is protected from disclosure under the Texas Public Information Act, Texas Government Code § 552.1101.

Contract - A formal, written agreement executed by an authorized TRWD employee containing the terms and conditions under which goods or services are furnished to TRWD.

Goods - Any personal property purchased by TRWD, including equipment, supplies, material, and component or repair parts.

Offeror - A company that submits a proposal in response to a TRWD purchasing or procurement request.

Services – The furnishing of labor and any ancillary materials by a vendor that does not include the delivery of a tangible end product and includes all work or labor performed for TRWD on a contractual basis including maintenance, construction, manual, clerical, personal, or professional services.

Specifications - A concise description of the goods or services that TRWD seeks to procure and the requirements the vendor must meet to be considered for award. The specification is the total description of the item or services to be purchased.

Vendor – A supplier of goods or services to TRWD.

**201.4 General Purchasing and Procurement Authority.** The General Manager has designated the Purchasing Department as the purchasing and procurement authority for TRWD. The General Manager has designated the Purchasing Manager to determine the purchase or procurement method that provides the best value for TRWD that is consistent with this Policy and complies with the laws applicable to the District.

**201.5 Contracting and Signature Authority.** Unless contracting authority is otherwise delegated by the Board, all contracts that have a value of \$150,000 or greater must be approved by the Board. Change orders to existing contracts that would increase or decrease the contract by more than \$150,000 must be approved by the Board. Subject to the Procurement Requirements set forth in 201.9.6, the Board delegates to the TRWD staff-member responsible for administering a construction contract the authority to approve a change order that involves an increase or decrease of \$150,000 or less, as allowed by Texas Water Code § 49.273(i).

Except for documents required by law to have the Board President's signature, the Board delegates to the General Manager signature authority for all TRWD contracts. The General Manager may establish designees to sign contracts at specific amounts in a written Delegation of Signature Authority memorandum that is presented to the Board.

**201.5.1 Renewal of Hardware/Software Maintenance and Support Agreements.** The Board delegates authority to the General Manager or designee to approve renewal of annual hardware/software maintenance and support agreements. The General Manager or designee shall notify the Administration and Policy Committee regarding approval of any agreement for renewal of hardware/software maintenance and support over \$150,000.

**201.5.2 Original Equipment Manufacturer (OEM) Repairs and Maintenance.** The Board delegates authority to the General Manager or designee to approve contracts for pump station maintenance and large equipment repairs of \$150,000 or more using original equipment manufacturers or their authorized dealers. The General Manager or designee shall notify the Construction and Operations Committee regarding approval of any OEM items over \$150,000.

**201.5.3 Public Relations and Advocacy Contracts.** The Board delegates authority to the General Manager or designee to approve the renewal of public relations and governmental advocacy contracts that will, or are likely to, exceed \$150,000 in a given fiscal year, provided that the General Manager or designee shall notify the Administration and Policy Committee regarding the approval of any such contract renewals. This delegation of authority also applies to renewals of contracts that may not exceed \$150,000 in a given fiscal year but will, over the life of the contract, exceed \$150,000.

**201.5.4 Insurance Contracts.** In accordance with delegation to the General Manager of ultimate authority to determine compensation and benefits for TRWD employees in Board Governance Policy 4.3, the Board delegates authority to the General Manager or designee to approve the renewal of administrative, personnel-related insurance and benefit agreements, provided that the General Manager or designee shall notify the Administration and Policy Committee of any renewals of contracts over \$150,000.

**201.6 Development of Purchasing Procedures.** The General Manager or designee shall establish and implement administrative procedures or guidelines consistent with this Policy to guide TRWD in its purchasing function. The administrative procedures should include:

- A more detailed discussion of permissible competitive procurement methods TRWD may use;
- Specific state procurement requirements;
- Requirements for TRWD contracts and change orders to contracts that comply with all applicable law and TRWD's practice; and
- Safeguards for the detection and prevention of fraud, waste, and abuse in TRWD's purchasing process.

The administrative procedures should ensure that TRWD's purchasing and procurement processes are fair and equitable, foster competition, and result in the provision of quality goods and services to TRWD at a reasonable cost.

**201.7 Conduct of Purchasing Employees.** TRWD employees assigned to the Purchasing Department and any other TRWD employees who are involved directly or indirectly in TRWD's procurement and purchasing process must follow TRWD's Board-adopted Employee Code of Ethics and must:

- Avoid activities that compromise or give the perception of compromising the best interests of TRWD;

- Avoid the knowing use of confidential or proprietary information for actual or anticipated gain;
- Maintain the confidentiality of the proprietary information of bidders and offerors, to the extent allowed by law;
- Avoid any activity that would create a conflict between their personal interest and the interest of TRWD;
- Avoid the appearance of unethical or compromising practices in relationships, actions, and communications associated with TRWD's purchase or procurement of goods or services;
- Avoid soliciting or accepting money, loans, gifts, favors, or anything of value, from present or potential vendors that might influence or give the perception of influencing a purchasing decision; and
- Never purchase goods or services for or on behalf of TRWD that are for their own personal benefit.

If any conflict or potential conflict of interest exists, the employee shall notify the Purchasing Manager in writing. If the Purchasing Manager finds that the employee has a conflict of interest, the employee will remove themselves from the purchasing or procurement process.

**201.8 Violations.** A violation or unauthorized departure from this Policy or the administrative procedures created to effectuate this Policy may result in removal from TRWD's purchasing process, disciplinary action up to and including termination as determined by the General Manager or designee, and possible criminal penalties.

**201.9 Procurement Requirements.** The following reflects TRWD's requirements for certain types of procurement.

The following strategies that are employed with the intention of circumventing the formal competitive bidding process are prohibited:

- Component Purchases – Purchasing a series of component parts or goods that, in normal purchasing practices, would be made in a single purchase.
- Separate Purchases - Purchasing goods or services in a series of separate purchases that, in normal purchasing practices, would have been made in a single purchase.
- Sequential Purchases – Purchases of items made over a period of time that, in normal purchasing practices, would be made in a single purchase.

**201.9.1. Construction, Equipment, Materials, and Machinery Contracts.**

For purchases over \$25,000 but less than \$150,000, TRWD shall solicit three formal bids on a uniform set of specifications as set forth in Texas Water Code § 49.273(e). Responses to the solicitation are not required to be sealed.

For purchases over \$150,000, TRWD shall solicit three formal bids on a uniform set of specifications. Responses to this solicitation must be sealed. TRWD shall advertise the solicitation in a newspaper with general circulation in TRWD's geographical area once a week for two consecutive weeks before the bids are opened, and the first publication must be at least fourteen days prior to the date of the opening of the sealed bids as required by Texas Water Code § 49.273(d).

**201.9.2. Professional or Consulting Services.** In accordance with Texas Government Code § 2254.003(a), TRWD may not select a provider of professional services on the basis of competitive bids but rather shall make its selection and award a contract on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. Under Texas Government Code § 2254.002(2)(A), Professional Services include accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, and forensic science.

In accordance with 30 Texas Administrative Code § 292.13(4), TRWD shall maintain a list of at least three qualified persons or firms for each area of professional service used by the District. The pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed \$25,000.

In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, TRWD shall follow the procedures provided in the Professional Services Procurement Act, Texas Government Code Chapter 2254, Subchapter A, as required by Texas Water Code § 49.057(d).

TRWD shall select consultants, who study or advise TRWD under a contract but do not have a traditional employer-employee relationship with TRWD, based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

**201.9.3 High-Technology Procurement.** TRWD shall procure equipment, goods, or services of a highly technical nature, as defined by Texas Local Government Code § 252.001(4), of more than \$50,000 by using appropriate local government cooperative purchasing programs, a request for proposal, or competitive sealed bidding.

**201.9.4 Reverse Auction Procedure.** TRWD may use the reverse auction procedure, as defined by Texas Government Code § 2155.062(d).

**201.9.5. Fuel Purchases.** Fuel purchases will be procured based on the dollar limit thresholds listed in Section 201.9.1. The purchase requisition for fuel purchases should include, at a minimum: the type of fuel needed; the amount needed to include the unit of measure; the location of fuel delivery; and the required delivery date.

**201.9.6 Change Order Limitations.** Change orders are not subject to the requirements of 201.9.1. In accordance with Texas Water Code § 49.273(i), change orders, in the aggregate, may not increase the original contract price by more than twenty-five (25) percent. The aggregate of change orders that increase the original contract price by more than twenty-five (25) percent may be issued only as a result of unanticipated conditions encountered during construction, repair, renovation, or changes in regulatory criteria or to facilitate project coordination with other political.

**201.9.7 Surplus Property.** Any personal property valued at up to \$10,000 owned by the District, which is found by the General Manager or designee to be surplus and is not needed by the District, may be sold under order of the General Manager or designee either by public or private sale or may be exchanged for other personal property needed by the District. Personal property must be exchanged for like fair market value, which value may be determined by the District. The General Manager or designee shall notify the Finance Committee regarding surplus designation and sale.

**201.10. Restriction of Communication.** Once a formal procurement process has begun, all communication with bidders or potential bidders regarding the competitive solicitation must be made by and through the Purchasing Department. Any and all other communication between a bidder/offeror and TRWD staff concerning the competitive solicitation is strictly prohibited. Failure to comply with this requirement may result in TRWD disqualifying the bidder's/offeror's submittal.

This restriction on communication applies only to communications regarding the competitive solicitation and does not prohibit a bidder or potential bidder from communicating with the Board or TRWD staff regarding ongoing business with TRWD or contracts previously executed with TRWD.

**201.11 Certificate of Interested Parties.** Before TRWD enters into a contract that requires Board approval or has a value of at least \$1,000,000 or is for services that would require a person to register as a lobbyist under Texas Government Code Chapter 305, the business entity must submit a disclosure of interested parties (Form 1295) with the Texas Ethics Commission, as required by Texas Government Code § 2252.908.

**201.12 Cooperative Purchasing.** TRWD may use local government cooperative purchasing programs created in accordance with state law to satisfy its competitive bidding requirements. All matters relating to or purchases made through a cooperative purchasing program should be handled by the Purchasing Department.

**201.13 Exemptions to Competitive Purchasing.** TRWD is not required to utilize competitive bidding in the following circumstances:

- TRWD may contract with any person to provide laboratory or environment services related to the environment, health, or drinking water testing.
- TRWD is not required to advertise or seek competitive bids for repairs and maintenance if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding.
- TRWD is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to TRWD facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the Board finds that doing so would compromise the safety and security of TRWD facilities or residents.
- TRWD is not required to advertise or seek competitive bids for the purchase of electricity for use by the District.
- TRWD is not required to advertise or seek competitive bids for 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.
- TRWD may purchase equipment, materials, or machinery at an auction that is open to the public.
- If TRWD experiences an emergency condition that may create a serious health hazard or unreasonable economic loss to TRWD that requires immediate corrective action, TRWD may negotiate limited duration contracts to make the necessary repairs. TRWD shall comply with all requirements of Texas Water Code § 49.274 regarding such contracts.
- If goods or services are available from only one source and unique to one vendor, to the best of TRWD's belief based upon thorough research, TRWD may purchase such sole source goods or services without competitive bidding.

**201.14 Fair Opportunities and Diverse Businesses.** TRWD is committed to promoting full and equal opportunity for all business to supply the goods and services needed to support the mission and operations of the District. TRWD encourages the participation and use of certified Diverse Businesses—businesses that are minority-

owned, woman-owned, socially disadvantaged, economically disadvantaged, small, service-disabled, and/or historically underutilized businesses—in the District’s procurement processes through neutral means. The Purchasing Department will ensure that the Board-adopted Fair Opportunities Purchasing and Contracting Policy is followed in TRWD’s purchasing and procurement processes.

**201.15 Procurement Cards (P-Cards).** TRWD may use Procurement Cards, or P-Cards, in certain circumstances to provide an expedient and efficient method of purchasing relatively small-dollar items. Procurement Cards should only be provided to identified TRWD staff as determined the General Manager or designee. The General Manager or designee shall establish a process for issuing P-Cards and tracking use of P-Cards.

All purchasing with Procurement Cards shall be made in strict compliance with this Policy and any established administrative procedures governing the use of P-Cards. Procurement Cards shall not be used to circumvent TRWD’s purchasing and procurement process. Under no circumstance can the holder of a Procurement Card use the P-Card for a personal purchase or a single purchase that exceeds the cardholder’s purchasing authority set forth in TRWD procedures.

TRWD shall establish administrative procedures for the responsible and lawful use of Procurement Cards.

**201.16 Electrical Energy Procurement.** TRWD may purchase energy in regulated service areas, such as through rural electric cooperatives, and deregulated service areas, through a Retail Electric Provider (REP). TRWD shall procure energy consistent with the risk profile strategies identified by the General Manager or designee that have been presented to the Board.

TRWD shall establish administrative procedures regarding energy procurement that address:

- TRWD’s risk profile for purchasing power;
- TRWD’s approach for procuring power in regulated service areas and deregulated service areas;
- TRWD’s commitment to the use of renewable energy;
- The approval of power purchases;
- The process for amendments to contracts related to energy procurement with REPs,
- Adding or replacing an REP; and



- Any delegated authority for energy procurement.

Any energy procurement that extends the term of the contract shall require approval of the Construction and Operations Committee. Power purchases within the term of an existing contract will require the approval of the Construction and Operations Committee, except when the window of opportunity due to operational needs or market conditions requires rapid response. In this case, the General Manager or their designee may approve power purchases and notify the Construction and Operations Committee.

A regular update regarding TRWD's Energy Procurement will be provided to the Board. The General Manager or designee should maintain a document or memorandum regarding Delegated Authority for Energy Procurement. This memorandum, with any changes, should be provided to the Board with TRWD's update regarding Energy Procurement.