

CHAPTER 6 PROCUREMENT REGULATIONS

Last Updated: June 22, 2009

PREFACE

This Chapter of the P&P is intended to be consistent with those portions of the Utah Procurement Code, Utah Code Ann., Title 63G, Chap. 6 (the “Procurement Code”) that apply to the District.

For ease of reference, the Sections of these Procurement Regulations are numbered the same as the related Procurement Code Section. For example, Section 102 of the Procurement Code describes the purposes of the Procurement Code, and P&P Section 6-102 describes the purposes of this Chapter. Since many of the Sections of the Procurement Code do not apply to local procurement units such as the District, the Section numbers of this Chapter are not always contiguous.

All District expenditures must be properly appropriated as described in P&P Chapter 3. Once a District expenditure has been properly appropriated, this Chapter of the P&P describes the manner in which the source for the budgeted purchase is to be selected. Once the source for a properly appropriated purchase has been selected, P&P Chapter 3 describes the manner in which the source for the budgeted purchase is to be selected.

The application of some Sections of these Procurement Regulations depends upon the size of the District purchase at issue. For example, P&P Section 6-409 applies to “small purchases” defined to include purchases of goods and services of \$25,000 or less. Any such purchase size described in this Chapter is intended to refer to the total consideration provided by the District as part of the subject purchase, whether in cash or in kind (such as a trade-in).

PART 1 GENERAL PROVISIONS

6-102 PURPOSES

This Chapter of the P&P is intended to:

(1) provide the District with cost effective goods and services, consistent with the District’s primary mission to provide uninterrupted service of safe public drinking water; and

(2) simplify, clarify and modernize the procurement procedures of the District in accordance with the terms of the Procurement Code, Utah Code Ann. §§63G-6-101, et seq., and other applicable law.

6-103 DEFINITIONS

Terms used in these Procurement Regulations shall be defined as described in Section 103 of the Procurement Code.

6-104 APPLICATION

(1) Except as otherwise directed by the Board, this Chapter of the P&P shall, govern the District's purchase of all goods and services.

(2) This Chapter of the P&P describes the procedure for District procurements. All District procurements shall be properly appropriated as described in P&P Chapter 3. Once an appropriate source has been selected pursuant to this Chapter of the P&P, contracts and expenditures must be authorized consistent with P&P Section 3-642. Any District monies shall be disbursed consistent with P&P Section 3-635.

(3) This Chapter of the P&P shall be interpreted in a manner consistent with those portions of the Procurement Code which apply to the District.

(4) Nothing in this Chapter of the P&P shall create rights, interests, or causes of action against the District, its Trustees, officers, agents or employees. Failure to follow procedures as described in this P&P Chapter shall not invalidate the action taken, unless otherwise expressly provided by law.

6-105 EXEMPTIONS

(1) The terms of this Chapter of the P&P shall not prevent the District from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law, including federal funding or other assistance.

(2) When a procurement involves the expenditures of federal funding or other assistance or contract funds, the Chief Procurement Officer shall comply with mandatory applicable federal law and regulations not reflected in these Procurement Regulations.

PART 2
PROCUREMENT ORGANIZATION

6-203 CHIEF PROCUREMENT OFFICER

The GM shall serve as the Chief Procurement Officer, unless another appointment is made by the Board. As used in this P&P Chapter, "Chief Procurement Officer" shall mean the District's Chief Procurement Officer or designee.

6-204 DUTIES OF CHIEF PROCUREMENT OFFICER

The Chief Procurement Officer shall:

- (1) supervise the District's procurement to assure that all District procurements are properly appropriated by the Board pursuant to P&P Chapter 3 and the instructions of the Board;
- (2) supervise the District's procurement to assure that it is consistent with this Chapter of the P&P;
- (3) exercise general supervision and control over inventories belonging to the District;
- (4) establish reasonable procedures for the inspection and acceptance of goods and services;
- (5) prepare and maintain specifications for goods and services as described in P&P Section 6-302 below; and
- (6) recommend updates to this P&P Chapter.

6-205 DELEGATION OF AUTHORITY

The Chief Procurement Officer may delegate authority, but shall supervise all procurement activities.

**PART 3
SPECIFICATIONS**

6-302 SPECIFICATIONS FOR SUPPLIES AND CONSTRUCTION

The Chief Procurement Officer shall prepare and maintain such specifications for goods and services procured by the District as the Chief Procurement Officer determines will reasonably advance the purposes of this Chapter of the P&P described in Section 6-102. Where available, the Chief Procurement Officer may adopt nationally recognized or state standards.

6-303 PURPOSE OF SPECIFICATIONS

Any specifications shall seek to:

- (1) promote the purposes of this Chapter of the P&P as described in Section 6-102;
- (2) promote overall economy and best use for the purposes intended;
- (3) encourage competition in satisfying the District's needs; and
- (4) not be unduly restrictive.

**PART 4
SOURCE SELECTION AND CONTRACT FORMATION**

6-401 CONTRACTS AWARDED BY SEALED BIDDING – PROCEDURE

(1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in this P&P Chapter.

(2) An invitation for bids shall be publicly issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description, a description of the time and place of any pre-bid conference, a description of any pre-qualification requirements, the address where bids will be received, and the deadline for receipt of bids. The invitation shall contain any applicable specifications, the criteria for bid evaluation and acceptance and the applicable contract terms and conditions, or, in the alternative, may contain information regarding how bidders may obtain a complete copy of this information.

(3) Public notice of the invitation for bids shall be given a reasonable time before the date described in the invitation for the opening of bids, as determined by the

Chief Procurement Officer. The notice of invitation for bids shall be published in a manner determined to be reasonable by the Chief Procurement Officer.

(4) A pre-bid conference may be held a reasonable time after the invitation for bids is published and a reasonable time before the deadline for submitting bids. Nothing stated in the pre-bid conference shall modify the invitation for bids unless expressly stated in writing by the District.

(5) The Chief Procurement Officer shall open bids in the presence of 1 or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, together with the name of each bidder, shall be recorded, and this information shall be subject to public inspection. The bids themselves shall not be open to public inspection, except as required by applicable statute.

(6) Bids shall be accepted without alteration or correction, except as authorized by this Chapter of the P&P. A bidder may correct mistakes discovered before bid opening by withdrawing, correcting, then resubmitting their bid.

(7) Bids shall be evaluated based on the criteria described in the invitation for bids. Invitations may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose, experience of the bidders, and the satisfaction of the purposes of these Procurement Regulations as described in P&P Section 6-102 above. No criteria may be used in the bid evaluation that is not described in the invitation for bids, or to which reference is made in the invitation for bids as described above.

(8) Withdrawal of inadvertently erroneous bids before or after award may be permitted by the Board if the Board determines that withdrawal must be allowed under applicable law, or if the Board determines by a preponderance of the evidence presented timely with a request for withdrawal: (i) the error was inadvertent, nonjudgmental and did not result from gross negligence; and (ii) withdrawal would serve the best interests of the District and would not impair the interests of fair competition; and (iii) withdrawal would otherwise be lawful. Correction of an inadvertently erroneous bid before or after award may be permitted by the Board if the Board determines that correction must be allowed under applicable law, or if the Board determines by clear and convincing evidence presented timely with a request for correction that: (i) the error was inadvertent, nonjudgmental and did not result from gross negligence; and (ii) correction would serve the best interests of the District and would not impair the interests of fair competition; and (iii) correction would otherwise be lawful. Except as otherwise mandated by law, no request for correction or withdrawal of a bid due to inadvertent error will be considered unless it: (i) is made in writing to the Board at the earliest possible date not later than three (3) business days after the deadline for submitting the bid; (ii) is accompanied by copies of all documents, including electronic documents, generated or compiled by the bidder in the course of formulating and submitting the bid; and (iii) is accompanied by detailed sworn statements of all persons involved in formulating and submitting the bid

showing the error was inadvertent and nonjudgmental; and (iv) is accompanied by the duly authorized and written agreement of the bidder that the bidder will indemnify, defend and hold the District harmless from any and all claims or costs relating in any way to the request. Except as otherwise required by applicable law, and regardless of whether the bidder requests withdrawal only or correction only, the Board may respond to any request for withdrawal or correction of a bid, by: (i) allowing or requiring withdrawal of the bid, with or without conditions; (ii) allowing or requiring correction of the bid, with or without conditions; (iii) denying both withdrawal and correction of the bid; (iv) finding that the bid in question was non-responsive; or (v) rejecting all bids and either canceling the procurement process or calling for a new procurement process.

(9) Absent other instructions from the Board, the contract shall be awarded subject to final approval of the contract as described in P&P Section 3-642, with reasonable promptness by written notice to the bidder whose bid is selected.

(10) Copies of all advertisement for bids and all bids shall be kept by the Chief Procurement Officer in a manner consistent with District records retention policies and procedures.

6-402 CONTRACTS AWARDED BY REVERSE AUCTION

(1) As used in this section, “reverse auction” means a process where:

(a) contracts are awarded in an open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Notwithstanding the requirement of this chapter, contracts may be awarded through a reverse auction. Minimum bids, reserves, minimum increases in bid, and other terms to the auction may be set by the District

6-403 PROCUREMENT AND USE OF RECYCLED GOODS

The Chief Procurement Officer shall maintain for reference a current copy of the recycled items available on state contract and give preference to recycled items when inviting bids and purchasing supplies to the extent the Chief Procurement Officer determines it is reasonable and consistent with the purposes of this Chapter of the P&P as described in Section 6-102.

6-404 PREFERENCE FOR PROVIDERS OF STATE PRODUCTS

The Chief Procurement Officer shall review and consider Utah Code Ann. §63G-6-404, and to the extent required by that Section only, give preference to those bidders offering

goods and services produced or performed in Utah as against those bidders offering goods and services produced or performed in any state that gives or requires a preference be given to goods and services produced or performed in that state. The provisions of this Section do not apply if application of this Section might jeopardize the District's receipt of federal funding or would otherwise be inconsistent with applicable law.

6-405 PREFERENCE FOR RESIDENT CONTRACTORS

When awarding contracts for construction, the Chief Procurement Officer shall review and consider Utah Code Ann. § 63G-6-405 and to the extent required by that Section of the Procurement Code only, give preference to resident contractors as against nonresident contractors from any state that gives or requires a preference be given to contractors from that state. The provisions of this Section do not apply if application of this Section might jeopardize the District's receipt of federal funding or would otherwise be inconsistent applicable law.

6-406 PREFERENCE FOR RECYCLED PAPER PRODUCTS

The District shall give preference to purchasing recycled paper products as described in Utah Code Ann. §63G-6-406.

6-407 USE OF ALKALINE PAPER

When purchasing paper or permanent records, the Chief Procurement Officer shall review and consider Utah Code Ann. §63G-6-407, and, to the extent practical, purchase alkaline paper as required by that Section of the Procurement Code.

6-408 USE OF COMPETITIVE SEALED PROPOSALS IN LIEU OF BIDS - PROCEDURE

(1) Except as otherwise instructed by the Board, solicitation of sealed proposals in lieu of bids may be used when determined to be appropriate by the applicable standing committee or ad hoc committee of the Board. The use of the procedure of soliciting sealed proposals in lieu of competitive sealed bids is appropriate where it is determined in writing that sealed competitive bids are not practicable or not advantageous to the District. Except as otherwise instructed by the Board, sealed proposals in lieu of bids are allowed for procurement of goods and services related to Process Control System/Supervisory Control and Data Acquisition (PCS/SCADA) instrumentation.

(2) Proposals shall be solicited through a request for proposals. The request for proposals shall describe the goods or services needed, the selection criteria, including the relative importance of price and other selection criteria, a description of any pre-qualification requirements, where proposals will be accepted, and the deadline for

submitting proposals. The requests for proposals shall contain any applicable contract terms or conditions, or, in the alternative, may contain information regarding how bidders can obtain a complete copy of this information. The request for proposals shall state the fact that discussions may be conducted with responsible offerors for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(3) Public notice of the request for proposals shall be given a reasonable time before the date described in the request for proposals for the opening of proposals, as determined by the Chief Procurement Officer. The notice of requests for proposals shall be published in a manner determined by the Chief Procurement Officer to be reasonable.

(4) Proposals shall be opened and maintained so as to avoid disclosure of contents to competing offerors during the process of negotiation.

(5) After the contract is awarded and approved consistent with P&P Section 3-642, a register of proposals shall be prepared and shall be open for public inspection. This register shall contain the name of each offeror, as well as the total proposal dollar amount. The proposals will be available for public inspection as required by applicable statute.

(6) As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals, for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(7) Offerors shall be accorded fair and equal treatment, as determined by the Chief Procurement Officer, with respect to any opportunity for discussion and revision of proposals.

(8) Revisions of proposals may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers.

(9) In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(10) Awards shall be made to the responsible offeror whose proposal is determined in writing to be in the best interests of the District, consistent with the requests for proposals. Except as otherwise instructed by the Board, awards shall be subject to final contract approval as described in P&P Section 3-642. Only those criteria described or referred to in the requests for proposals may be used for selection.

(11) The contract file shall contain the basis on which the award is made. Copies of all requests for proposals and all proposals shall be kept by the Chief Procurement officer in a manner consistent with District records retention policies and procedures.

6-409 SMALL PURCHASES

- (1) All purchases of goods or services for \$50,000 or less are small purchases.
- (2) Before making a purchase of \$1,000 or less, the District employee responsible for the purchase shall use means which are reasonable under the circumstances to assure that the District is getting good value and a reasonable price. A purchase of goods or services for more than \$1,000, but not exceeding \$50,000, may be awarded without a competitive process after the solicitation of price quotations from enough prospective vendors or suppliers to reasonably ensure that the District received a competitive price. Such solicitations may be in writing or made orally.
- (3) Department managers are authorized to make purchases of goods and services of \$25,000 or less which have been properly appropriated consistent with Chapter 3 of the P&P. Purchases greater than \$25,000 shall be authorized and approved by the Chief Procurement Officer.
- (4) Procurement of supplies, materials, equipment or services shall not be intentionally split or separated into smaller segments or orders to avoid the competitive bidding, requests for proposals and bonding requirements of this Chapter of the P&P.

6-410 CIRCUMSTANCES JUSTIFYING AWARD OF CONTRACT WITHOUT COMPETITION

- (1) The Chief Procurement Officer may award a contract for goods or services without competition when the purchase is small as described in P&P Section 6-409, or the Board determines that:
 - (a) there is only one reliable source for the required good or service; or
 - (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the goods or services;
 - (c) a specific supplier, service provider, or contractor has a unique product or has unique knowledge, experience or expertise, etc., such that the best interests of the District and the purposes of this P&P Chapter as described in Section 6-102 will best be served by an award without competition; or
 - (d) the procurement is an emergency.

- (2) When goods or services are purchased by the District under a state contract, the District is relying upon the competitive process conducted by the state, and no additional competitive process is required.

6-411 EMERGENCY PROCUREMENTS

Notwithstanding any other provision of this P&P Chapter, when the Chief Procurement Officer determines there exists a threat to public health or welfare, the health or safety of District employees, the District's water or water supply, important District facilities, or other similar threats, under emergency conditions, the Chief Procurement Officer may make emergency procurements without a competitive process. A written determination of the basis for the emergency and for the selection of the particular contractor shall be noted in the contract file and the matter shall be brought to the attention of the Board as soon as practical.

6-412 CANCELLATION AND REJECTION OF BIDS

An invitation for bids, a request for proposals, or other solicitation, may be amended or canceled, and any or all bids, proposals or other responses may be rejected, in whole or in part, as described in the invitation for bids, request for proposals or other solicitation, when the Board or the Chief Procurement Officer determine it is in the best interest of the District. The reasons for the amendment or cancellation shall be stated in the contract file.

6-413 DETERMINATION OF NON-RESPONSIBILITY OF BIDDER

A determination of non-responsibility of a bidder or offeror shall be made in writing by the Chief Procurement Officer. The failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of District management and the District's Board without prior written consent of the bidder or offeror.

6-414 PRE-QUALIFICATION OF SUPPLIERS

Prospective suppliers may be pre-qualified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include, but not be limited to, pre-qualified suppliers.

6-416 COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT PROHIBITED

(1) Subject to the limitations of this Section, any type of contract which will promote the best interests of the District may be used; provided that a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made by the Board that such contract is likely to be less costly to the District than any other type, or that it is impractical to obtain the goods and services required under another form of contract.

(2) Except with respect to firm, fixed-price contracts, no contract type shall be used unless it has been determined by the District's Board that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

6-417 PERIOD OF TIME FOR CONTRACT

(1) Unless otherwise provided by law, a contract for goods and services may be entered into for any period of time considered to be in the best interests of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, and expenditure of funds have been properly authorized by the Board for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for that purpose. The substance of this Section shall be described in multiple year contracts.

(2) Prior to the utilization of a multi-year contract, the Chief Procurement Officer shall determine in writing that estimated requirements cover the period of the contract and that such a contract will serve the best interests of the District.

(3) When funds are not budgeted to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The substance of this Section shall be described in multiple year contracts.

6-418 RIGHT OF DISTRICT TO INSPECT PLACE OF BUSINESS OF CONTRACTOR OR SUBCONTRACTOR

The District may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract entered into, or to be entered into, by the District.

6-419 DETERMINATIONS FINAL EXCEPT WHEN ARBITRARY AND CAPRICIOUS

Each determination made by the Chief Procurement Officer pursuant to this Chapter of the P&P or the Procurement Code which has not been timely appealed to the Board, and each determination made by the Board pursuant to this Chapter of the P&P or the Utah Procurement Code, is final and conclusive unless the person or entity objecting to the

determination can show that the determination is arbitrary and capricious, or clearly erroneous.

6-420 FACTUAL INFORMATION TO ATTORNEY GENERAL IF COLLUSION IS SUSPECTED

When for any reason collusion or any other anti-competitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted by the District's Chief Procurement Officer to the Utah Attorney General.

6-422 EXEMPTIONS FROM SOURCE SELECTION AND CONTRACT REQUIREMENTS - VIOLATION PENALTY

The District shall not negotiate, enter into, or cause to be negotiated prior to open bidding for the prime contracting agent, any predetermined agreement or arrangement which causes interference with the traditional fair competitive bidding process or the rights of employees under state and federal law. Any agreement or arrangement entered into in violation of this Section is unenforceable and void *ab initio*.

This provision shall not apply to the District if, as a condition of a federal grant, there is a requirement that a schedule of predetermined wages be included in the contract.

6-424 DISTRICT PARTICIPATION IN STATE CONTRACTS

The Chief Procurement Officer shall make reasonable efforts to maintain a current list of goods and services available through state contracts and consider this source for the purchase of goods and services, particularly small purchases. When goods or services are purchased by the District under a state contract, the District is relying upon the competitive process conducted by the state, and no additional competitive process is required.

PART 5 PROCUREMENT OF CONSTRUCTION

6-501 ALTERNATIVE METHODS OF CONSTRUCTION

(1) Except for small purchases described in P&P Section 6-409, and except as otherwise described in this Section or instructed by the Board, competitively bid, single prime contractor, design-bid build projects, shall be the construction contract management method used by the District.

(2) An alternative method of construction contract management may be selected by the Engineering Committee if it is determined to best serve the interests of the District and the purposes of this P&P Chapter. Before choosing a construction

contracting management method, the Engineering Committee shall consider the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project;
- (c) the extent to which the requirements of the District and the ways in which they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is;
- (g) the availability, qualification, and experience of District personnel to be assigned to the project, and how much time the District personnel can devote to the project;
- (h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered; and
- (i) the extent to which delays or errors in the project could impact the quantity or quality of the water sold by the District.

(3) In the event an alternative method of construction contract management is deemed appropriate as described in Section 6-501(1) above, the Engineering Committee may choose from the following construction contracting management methods. The methods described are not necessarily mutually exclusive and may be combined on a single project. These descriptions are intended to be general in nature. They are not intended to fix the details of any construction contract management method. The method may be adapted consistent with this P&P Chapter and the Procurement Code to fit the circumstances of each project.

(a) Multiple Prime Contractors. Under the multiple prime contractor method, the District contracts directly with a number of contractors to complete portions of the project in accordance with plans and specifications. The project may be divided by segment or by specialty. The prime contractors shall be selected in accordance with one of the methods described in Part 4 of this Chapter 6 of the P&P.

(b) Design-Build. In a design-build project a business contracts directly with the District to meet the District's requirements as described in a set of

performance specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package. The design-build contractor shall be selected by one of the methods described in Part 4 of this Chapter 6 of the P&P.

(c) Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The District may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager shall be selected by one of the methods described in Part 4 of this Chapter 6 of the P&P and Utah Code Ann. §63G-6-502.

(d) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire project has been completed.

6-503 BID SECURITY REQUIREMENTS

(1) Except as described in P&P Section 6-503(4), invitations for bids on District construction contracts shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the bid is submitted

(2) Except as otherwise described in the invitation for bids, the bid security shall be cash or a surety bond in a form acceptable to the Chief Procurement Officer, properly executed by a surety licensed to issue bid bonds in the State of Utah.

(3) If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, unless the Chief Procurement Officer determines the failure to comply with the bid security requirements is nonsubstantial. The Chief Procurement Officer may determine the failure to comply with bid security requirements is nonsubstantial if:

(a) only one bid is received, and there is not sufficient time to rebid the contract;

(b) the amount of the bid security submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the bid in question and the next lowest acceptable bid; or

(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification, but the bidder increases the amount of guarantee to the required limits within 48 hours after the bid opening.

(4) The Chief Procurement Officer may waive the requirement for bid security for bids estimated to be less than \$50,000 if the Chief Procurement Officer determines bid security is not necessary to protect the interests of the District.

(5) After the bids are opened, they shall be irrevocable for the period specific in the invitation for bids, except for allowed corrections or withdrawals as provided in P&P Section 6-401. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(6) When issuing an invitation for bids, the District shall not require bidders to obtain a bid bond from a specific insurer or surety company, producer, agent or broker.

6-504 PERFORMANCE AND PAYMENT BONDS

(1) Except as described in P&P Section 6-504(5), performance and payment bonds shall each be required for all construction contracts in the amount of 100% of the contract price.

(2) The performance and payment bonds shall be either cash or surety bonds properly issued by a surety or sureties authorized to issue performance and payment bonds in the State of Utah, in a form acceptable to the Chief Procurement Officer.

(3) Except as otherwise specified in the solicitation, the performance and payment bonds shall be delivered by the contractor to the District as determined in writing by the Chief Procurement Officer. The Chief Procurement Officer may extend the deadline for providing the required bonds as the Chief Procurement Officer determines is reasonable and in the best interests of the District.

(4) If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive bidder.

(5) The Chief Procurement Officer may waive the requirement for performance and payment bonds for contracts less than \$50,000 if the Chief Procurement Officer determines performance and payment bonds are not necessary to protect the interests of the District.

(6) When issuing an invitation for bids, the District shall not require bidders to obtain performance and payment bonds from a specific insurer or surety company, producer, agent or broker.

6-506 PRELIMINARY NOTICE OF PAYMENT BOND CLAIM

Any person furnishing labor, service, equipment or material for which a payment bond claim may be made shall provide preliminary notice to the designated agent as described in Utah Code Ann. § 38-1-32. Except that this section does not apply to a person performing labor for wages if a notice of commencement is not filed as prescribed in Utah Code Ann. § 38-1-31 for the project or improvement for which labor, service, equipment, or material is furnished. Any person who fails to provide the preliminary notice required by this Section 6-506 of the P&P may not make a payment bond claim. The preliminary notice required by this section must be provided prior to commencement of any action on the payment bond.

6-507 FORM OF BONDS

Bid bonds, payment bonds and performance bonds must be cash or surety bonds in a form acceptable to the District and properly issued by a surety licensed and authorized to issue bid, payment and performance bonds in the State of Utah. The Chief Procurement Officer may specify a specific form of bonds as part of the solicitation. Any person may obtain from the District a certified copy of a bond upon payment of the cost of reproduction and postage, if any. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

PART 6 CONTRACT CLAUSES

6-601 CONTRACT CLAUSES

(1) The Chief Procurement Officer shall adopt, and amend from time to time, standard District construction contract clauses regarding the following topics: Changes; Suspension of Work; Price Adjustment; Claims Based on District Actions or Omissions; Default - Delay - Time Extension; Termination; and, Remedies. The standard District construction contract clauses shall be included in all District construction contracts. Material modifications to these standard District construction contract clauses may be used if the Chief Procurement Officer determines in writing that such modifications are in the best interests of the District and serve the purposes of this Chapter of the P&P as described in P&P Section 6-102. Modifications which are not substantive may be made without the described written determination. Any material variation from these standard District construction clauses shall be noted in the solicitation documents. Making copies of the contract form, General Conditions and Special Conditions available upon request, without further notation of changes, will fulfill this requirement.

(2) The Chief Procurement Officer may, to the extent the Chief Procurement Officer determines is in the best interests of the District and serves the purposes of this Chapter of the P&P as described in P&P Section 6-102, adopt, and amend from time to time, additional standard District construction contract clauses.

(3) The Chief Procurement Officer may, to the extent the Chief Procurement Officer determines is in the best interests of the District and serves the purposes of this Chapter of the P&P as described in P&P Section 6-102, adopt, and amend from time to time, standard District contract clauses to be used in contracts for the procurement of particular goods and services.

6-602 CERTIFICATION OF CHANGE ORDER

Any construction contract change order which increases the contract amount shall be properly appropriated consistent with Chapter 3 of the P&P and the instructions of the Board. The approval of such change order shall be consistent with Section 3-642 of the P&P. The expenditure for an approved change order shall be made in a manner consistent with Section 3-617 of the P&P.

PART 7 ARCHITECT-ENGINEER AND OTHER PROFESSIONAL SERVICES

PREFACE

Part 7 of the Procurement Code does not directly apply to local public procurement units. Utah Code Ann. §63G-6-104(3). Utah Code Ann. § 17B-1-108 applies to Local District procurement of services from a professional architect, engineer or surveyor. However, Utah Code Ann. § 63G-6-104(3) requires local public procurement units to adopt ordinances relating to the procurement of a professional architect and engineer services that are not inconsistent with Part 7 of the Procurement Code.

6-701 POLICY REGARDING PROFESSIONAL SERVICES

- (1) The following shall be considered in the selection of a professional
 - (a) the qualifications, experience, and background of each person or firm;
 - (b) the specific individuals assigned to the project and the time commitments of each to the project; and
 - (c) the project schedule and the approach to the project that the professional will take.
- (2) The District may engage the services of a professional architect, engineer or other professional based on the criteria under P&P Section 6-701(1) rather than solely on lowest cost.

(3) The Chief Procurement Officer may from time to time publish notice soliciting statements of qualifications from professionals.

(4) Prior to the selection of a professional, the Chief Procurement Officer shall determine the method of selection which will best serve the interests of the District and the purposes of this Chapter of the P&P as described in P&P Section 6-102. One or more of the following described methods of selection shall be used. The methods described are not necessarily mutually exclusive and may be combined for a single procurement. These descriptions are intended to be general in nature. They are not intended to fix the details of any particular selection process.

(a) Sole Source Selection. A particular professional may have unique knowledge or experience such that negotiation with one professional is in the best interests of the District and will best serve the purposes of this Chapter of the P&P as described in P&P Section 6-102. For example, a particular engineer may have performed a preliminary study and may be the clear best choice for the detailed design phase of the project which results from that study. A sole source selection ordinarily should be made without solicitations from other professionals. A written determination of the reasons the professional is to be selected by sole source method shall be made. All sole source selections for contracts exceeding \$50,000 must be approved by the Board.

(b) Solicitation of Proposals. This method of selection usually involves publishing a general statement of work and a solicitation of proposals and statements of qualifications. Professionals may or may not be required to pre-qualify. The proposals are intended to expand upon the detail of the statement of work and suggest refinements of the statement of work. The appropriate Board Committee, the appointed selection committee, or the Chief Procurement Officer reviews the proposals and the statements of qualifications. Clarifications or modifications of the proposals may be requested before a selection is made. The appropriate Board committee, the appointed selection committee, or the Chief Procurement Officer shall make a selection based upon qualifications, the approach to the project described in the proposal, and price, without specific weighting of these criteria. The District may negotiate modifications to the proposal of the favored professional before final selection.

(c) Qualification Based Selection. The District may from time to time solicit statements of qualifications from professionals. The appropriate Board committee, the appointed selection committee, or the Chief Procurement Officer will review the statements of qualifications and select a short list consisting of a minimum of 3 professionals for a particular project. The professionals may be interviewed, and/or may be given a tour of the site, before or after the creation of a short list. The professionals on the short list will be invited to submit proposals in response to a statement of work prepared by the District. The appropriate Board committee, the appointed selection committee, or the Chief Procurement Officer will review the proposals and rank the professionals based upon qualifications, approach to the project and other non-financial criteria. The appropriate Board committee, the appointed selection committee, or the

Chief Procurement Officer may request clarifications or modifications of the proposals before the ranking is made. Negotiations will be conducted with the top ranked professional. If an agreement acceptable to the District cannot be reached with the top ranked professional those negotiations are ended and negotiations begun with the next highest ranked professional and so on until an agreement acceptable to the District is negotiated with a qualified professional. Those professionals submitting proposals will be notified of the final selection.

(d) Invitation of Bids. This method is appropriate where the District's needs are specific enough, and the likely field of qualified professionals is large enough, that selecting the professional based upon price, or a specific weighted combination of price and qualifications, is appropriate. Professionals may or may not be required to pre-qualify.

(e) General Services Agreements (GSAs) and Task Orders. The District may periodically solicit and review statements of qualification and negotiate GSAs, considering the criteria described in Subsection (1) above, so that specific task orders for budgeted services may be issued expeditiously to qualified professionals already under a GSA. All GSAs shall be approved by the Board. Individual Task Orders shall be approved as described in P&P Section 3-642.

PART 8 LEGAL AND CONTRACTUAL REMEDIES

6-801 PROTEST TO CHIEF PROCUREMENT OFFICER - TIME – AUTHORITY TO RESOLVE PROTEST

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of the contract may protest a determination or decision made in the manner provided below.

(2) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the award of the contract may protest to the Board. The Board may refer the matter to the State Appeals Board for decision.

(a) Such a protest must be in writing, contain the protesting party's name, address, telephone number, the relief being sought, a statement of facts and the reasons and authority supporting the protest. The protest must be signed by an authorized representative of the protesting party.

(b) The protest shall be submitted in writing within 5 business days after the aggrieved person knows or should have known the facts giving rise thereto.

(3) Protests with respect to an invitation for bids, request for proposals, or other solicitation shall be submitted in writing to the Chief Procurement Officer and the

Chair prior to the deadline for filing bids, proposals or other responses to the invitation for bids, request for proposals or other solicitation, unless the aggrieved party did not know and should not have known of the facts giving rise to the protest prior to that date.

(a) Such a protest must be in writing contain the protesting party's name, address, telephone number, the relief being sought, a statement of facts and the reasons and authority supporting the protest. The protest must be signed by an authorized representative of the protesting party.

(b) The protest shall be submitted in writing within five (5) business days after the aggrieved person knows or should have known the facts giving rise thereto.

6-802 EFFECT OF TIMELY PROTEST

In the event of a timely protest under P&P Subsection 6-801 the District shall not proceed further with the solicitation or with the award of a contract until all administrative and judicial remedies have been exhausted or until the Chief Procurement Officer makes a written determination that award of the contract without delay is necessary to protect substantial interests of the District

6-803 COST TO OR AGAINST PROTESTOR

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor, in addition to any other relief, shall be entitled, as a claim against the District, to the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs.

(2) When a protest is not sustained administratively or upon administrative or judicial review, the protestor shall reimburse the District for its reasonable costs incurred in the appeal.

6-804 DEBARMENT FROM CONSIDERATION FOR AWARD OF CONTRACTS - CAUSES FOR DEBARMENT

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, after consultation with legal counsel for the District, shall have authority to debar a person or firm for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The Chief Procurement Officer, after consultation with legal counsel for the District, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for

debarment under subsection (2) of this Section, in which case the suspension shall remain in effect until after the trial of the suspended person.

(2) The causes for debarment include the following:

(a) conviction of a criminal offense as incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a District contractor;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of a contract;

(e) collusion with other prospective bidders to the detriment of the District and its competitive bid procedures; or

(f) any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause.

(3) Any person or entity debarred or suspended may appeal such debarment or suspension to the District's Board of Trustees by filing a written protest with the chair of the District's Board within 7 business days after notice of debarment or suspension has been mailed by the Chief Procurement Officer. The Board may refer the matter to the State Appeals Board for decision.

6-805 AUTHORITY TO RESOLVE CONTROVERSY BETWEEN DISTRICT AND CONTRACTOR

The Chief Procurement Officer is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy which arises between the District and a contractor under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistakes, misrepresentation, or other cause for contract modification or rescission.

6-806 DECISIONS OF CHIEF PROCUREMENT OFFICER TO BE IN WRITING - EFFECT OF NO WRITING

(1) The Chief Procurement Officer shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this Chapter.

(2) A decision shall be effective until stayed or reversed on appeal, except to the extent provided in P&P Section 6-802. A copy of the decision under P&P Section 6-806(1) shall be mailed or otherwise furnished immediately to the protestor, prospective contractor or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor appeals administratively to the Chief Procurement Officer pursuant to P&P Section 6-801, or the protestor, prospective contractor, or contractor commences an action in court in accordance with P&P Section 6-815.

(3) If the Chief Procurement Officer does not issue the written decision regarding a contract controversy within 60 calendar days after written request for a final decision, or within such longer period as may be agreed on by the parties, then the contractor may proceed as if an adverse decision had been received.

6-815 JURISDICTION OF DISTRICT COURT

(1) The Third Judicial District Court of the State of Utah shall have jurisdiction over an action, whether the action is at law or in equity, between the District and:

(a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection with the solicitation or award of a contract;

(b) a person who is subject to a suspension or debarment proceeding;
and

(c) a contractor, for any cause of action which arises under, or by virtue of a contract.

6-816 EFFECT OF PRIOR DETERMINATION BY AGENTS OF DISTRICT

In any judicial action under P&P Section 6-815, determinations by the Chief Procurement Officer, the Board, a selection committee, employees, agents, or other persons appointed by the District, shall be final and conclusive only as provided in P&P Sections 6-419 and 6-806.

6-817 STATUTES OF LIMITATIONS

(1) Any action under P&P Section 6-815(1)(a) shall be initiated as follows:

(a) within 20 calendar days after the aggrieved person knows or should have known of the facts giving rise to the action; provided, however, that an action with respect to an invitation for bids or request for proposals shall be initiated prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action prior to bid opening or the closing date for proposals; or

(b) within 14 calendar days after receipt of a final administrative decision pursuant to P&P Section 6-806.

(2) Any action under P&P Section 6-815(1)(b) shall be commenced within 6 months after receipt of a final administrative decision pursuant to P&P Section 6-806.

(3) The statute of limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to P&P Section 6-815(1)(c).

6-818 EFFECT OF VIOLATION PRIOR TO AWARD OF CONTRACT

If, prior to award, it is determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with the law.

6-819 EFFECT OF VIOLATION AFTER AWARD OF CONTRACT

If, after an award, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified and affirmed if it is determined that doing so is in the best interests of the District; or

(b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit;

(2) if the person awarded the contract has acted fraudulently or in bad faith,

(a) the contract may be declared null and void; or

(b) the contract may be ratified and affirmed if such action is in the best interests of the District, without prejudice to the District's rights to any appropriate damages.

6-1001 PROCUREMENT ETHICS

All Trustees, Officers and employees of the District shall comply with the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Title 67, Chapter 16. Notwithstanding any provision in that Act, no Trustee, Officer or staff shall accept, directly or indirectly, an economic benefit, for themselves, any family member, or any entity they have an equity interest in, tantamount to a gift -- excepting only an occasional invitation to a meal, sporting event and other similar social events, the apparent value of which does not exceed fifty dollars (\$50) -- from any person associated with a supplier, or prospective supplier, of goods or services to the District.