

## **Forest Preserve District of Will County Procurement Ordinance**

### **Preamble**

The Forest Preserve District of Will County's ("District") mission is to protect, conserve, enhance, and promote Will County's natural heritage for the educational, recreational, and environmental benefit of present and future generations.

The intent of this comprehensive procurement ordinance is to insure the selection and purchase of quality goods and services on a competitive basis in a fair and equitable manner that is fiscally responsible and engenders public confidence in District procurement procedures. Solicitation of donated goods and services is exempt from this ordinance.

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### **Article 1: Purpose and Application**

#### **1.1 Purpose**

- A. Interpretation. This Ordinance shall be construed and applied to promote its underlying purposes and policies.
- B. Purposes and Policies. The underlying purpose and policies of this ordinance:

1. To invite competition, to guard against favoritism, negligence, extravagance, fraud, and corruption, and to secure the best work or supplies at the lowest practicable price.
2. To fairly and equitably treat all persons involved in public purchasing with the District.
3. To simplify and clarify the law governing procurement by the District.
4. To maximize to the fullest extent practicable, the purchasing value of public funds in procurement.
5. To foster broad-based competition within the free enterprise system.
6. To provide safeguards for the maintenance of a procurement system of quality and integrity.
7. To provide guidelines for purchases of equipment, materials, supplies, and services for the District's operational requirements, so the competitive and unbiased selection of vendors is insured.
8. To maximize the reduction of discarded materials.
9. To support markets for recycled and other environmentally preferable products and encourage contractors to buy such products whenever practicable.

## **1.2 Requirement of Good Faith**

This Ordinance requires all parties involved in the negotiation, performance, or administration of District contracts to act in good faith.

## **1.3 Severability**

If any article, part, section, subsection, clause, or phrase of this Ordinance or application thereof to any person or circumstances is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the Ordinance.

## **1.4 Singular-Plural and Gender Rules**

- A. Singular-Plural. Words in the singular number include the plural, and those in the plural include the singular.

- B. Gender. Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

## **Article 2: Definitions**

### **2.1 Definitions**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Ordinance or regulations promulgated there under:

- A. Architect-Engineer and Land Surveying Services. Those professional services within the scope of practice of architecture, professional engineering, structural engineering, or land surveying, as defined by the laws of the State of Illinois.
- B. Attorney. The District's legal representative appointed by the President with the advice and consent of the Board.
- C. Bid Deposit. A Bid Bond or Cashiers Check for 10% of the amount bid made payable to the Forest Preserve District of Will County, shall accompany each bid, attached to the front cover, as a guarantee that if the bid is accepted, a contract will be entered into. Money Orders or Company checks will NOT be accepted. Bid Deposits will be returned to the unsuccessful bidder after the Forest Preserve Board of Commissioners awards the contract.
- D. Bid Package. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids for the purchase or contract of any item or nonprofessional service, which estimated price equals or exceeds \$20,000.00.
- E. Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights, and in which the employee-beneficiary is not given notice of alterations, or other dispositions of, the property subjected to the trust.
- F. Board. See Forest Preserve Board of Commissioners.
- G. Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- H. Change Order. A change in a contract term, other than as specifically provided for in the contract, which authorizes or necessitates any increase or decrease in the cost of the contract or the time to completion.
- I. Committee(s). The District has two Standing Committees as follows.

1. Finance Committee. The Committee established by the Forest Preserve Board of Commissioners to create financial policies and procedures, and review and recommend appropriations and expenditure of funds for the District.
  2. Operations Committee. The Committee established by the Forest Preserve Board of Commissioners to formulate and make recommendations for policies relating to District operational functions and shall cause to be compiled a set of such policies which, when adopted, shall constitute a guide to future decisions of the District.
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- J. Competitive Bidding. Procurement method in which bids from competing contractors, suppliers, or vendors are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract as well as the criteria by which the bids will be evaluated.
  - K. Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the District and is not a matter of public knowledge or available to the public on request.
  - L. Construction. The process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property.
  - M. Contract. All types of District agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
  - N. Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
  - O. Contractor. Any person having a contract with the District.
  - P. Cooperative Purchasing. Procurement conducted by or on behalf of more than one Public Procurement Unit.
  - Q. Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
  - R. Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or

which have actually been incurred by the contractor in performing the contract.

- S. Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase, request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.
- T. District. Forest Preserve District of Will County and any District officer, official, commission, board, employee, or agency whose purchasing authority is subject to the Board.
- U. Employee. An individual drawing a salary or wages from the District, whether elected or not.
- V. Environmentally preferable products and services. Commodities or services that are less detrimental to the environment or human health than competing commodities or services serving the same purpose. Includes commodities or services that minimize waste, use recycled materials, conserve energy or water, or reduce the consumption or disposal of toxic materials.
- W. Executive Director. The chief administrator of the District appointed by the Forest Preserve Board of Commissioners. The term "Executive Director" shall also include his designee.
- X. Financial Interest.
  - 1. Ownership of any interest or involvement in any relationship from which, or as a result of which, an individual within the past year has received, or is presently or in the future entitled to receive, more than \$1,200.00 per year, or its equivalent;
  - 2. Ownership of 5% of any property of a business; or
  - 3. Holding a position in a business such as officer, director, trustee, partner, employee, or holding any position of management.
- Y. Forest Preserve Board of Commissioners (Board). The County officials elected by the voters of the County to be the Legislative Body of the County also are the elected representatives governing the Forest Preserve District of Will County, a separate legislative body.

- Z. Gratuity. A payment, loan, subscription, advance, and deposit of money, service, or anything of more than nominal value, present or promised, without consideration of substantially equal or greater value is received.
- AA. Immediate Family. Husband, wife, daughter, son, mother, father, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law and son-in-law.
- BB. Joint Purchase Act. The Governmental Joint Purchasing Act, 30 ILCS 525/0.01 et seq., or any successor statute.
- CC. Organizational Rules. Rules of District governance established and adopted by the current Board.
- DD. Payment Bond. Surety bond posted by a Contractor to guarantee that its subcontractors and material suppliers on the project will be paid.
- EE. Person. Any individual or group of individuals, business, union, firm, corporation, trust, partnership, association, joint venture, committee, club, or other entity.
- FF. Performance Bond. Surety bond posted by a Contractor to ensure performance of the contract.
- GG. President. The President of the Forest Preserve Board of Commissioners of the Forest Preserve District of Will County.
- HH. Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- II. Pricing Data. Factual Information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- JJ. Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- KK. Professional Services. The services of a person possessing a high degree of professional skill where the ability or fitness of the individual plays an important part and the primary reason for that purchase is the

service provided and the skills are primarily cognitive as opposed to manual. "Professional Services" includes, but is not limited to, services rendered in , accounting, engineering, architecture, design, financial, health, appraisals, technology and biological or other technical planning and surveys.

- LL. Project Manager. The individual identified in the Notice of Contract Award or any other designated employee(s) of the District, representing the interest of the District.
- MM. Public Procurement Unit. The State of Illinois, any County, city, town, and any other subdivision of the state or public agency of any such subdivision, public authority, education, health, or other state or local entity which expends public funds for the procurement of supplies, services, and construction.
- NN. Recycled Products. Goods containing materials, which have been diverted from the solid waste stream including post-consumer materials, and materials or by-products generated in industrial processes or which have been wholly or partially remanufactured.
- OO. Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals for professional services, where the procedure or method to accomplish a goal or result is to be determined and the cost negotiated.
- PP. Request for Qualifications. All documents, whether attached or incorporated by reference, utilized for soliciting qualifications, for professional services.
- QQ. Responsible Bidder or Offeror. A person who—in accordance with the procedures set forth in Section 5.6—has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

For construction contracts, a Responsible Bidder must meet all of the following applicable criteria, and submit evidence of such compliance:

1. All applicable laws prerequisite to doing business in Illinois.
2. Evidence of compliance with:
  - a. Federal Employer Tax Identification Number or Social Security Number (for individuals).

- b. Provisions of Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).
  - c. All federal, state, and local laws required of government contracting.
3. Certificates of insurance indicating the following coverages: general liability, workers' compensation, completed operations, automobile, hazardous occupation, product liability, and professional liability.
  4. Compliance with all provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades as covered in the act.
  5. Participation in apprenticeship and training programs approved and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.
- RR. Responsive Bidder or Offeror. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids or in the request for proposals.
- SS. Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product and other than reports which are merely incidental to the required performance. This definition shall not apply to employment agreements, collective bargaining agreements or Professional Services contracts.
- TT. Small Business Enterprise Initiative. A District program established to document and track businesses bidding on capital projects and providing professional services that are defined by the State of Illinois as "Small Business", "Minority Business Enterprise", "Female Business Enterprise" and "Persons with Disabilities Enterprise".
- UU. Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.



- VV. Standing Committee. Any committee established by the Forest Preserve Board of Commissioners with specific duties and responsibilities, as set forth in the Board Organizational Rules.
- WW. Stringing. Knowingly structuring a contract or job order to avoid the contract or job order being subject to competitive bidding requirements.
- XX. Supervisor. A District employee designated under the District's Salary Administration Program with the responsibility for the direction and oversight of other District employees or a specific program. There are several supervisory levels in the District, and where a specific position is noted in this ordinance, authority for decision-making is specific to that position.
1. Supervisor. Includes coordinators, program supervisors and section supervisors with oversight responsibility for a specific programmatic or operational area or facility.
  2. Superintendent. Department supervisor for each of the District's six departments including Finance, Operations, Planning and Development, Police, Public Affairs, and Public Programs and Education.
  3. Division Director. Supervisor with oversight responsibilities for two or more departments or major programmatic areas. The District's three divisions include Business Administration and Finance, Planning and Operations, and Public Affairs and Education.
  4. Executive Director. See 2.1.W.
- YY. Supplies. All property, including but not limited to equipment, materials, and printing, excluding land or a permanent interest in land.
- ZZ. Surplus. All supplies that are beyond their useful life and have no value or use to the District as determined by the Operations Committee and approved by Board.

**Article 3: Public Access to Procurement Information**

**3.1 Public Access to Procurement Information**

Procurement information shall be a public record to the extent provided in the Illinois Freedom on Information Act.

**Article 4: Duties of the Executive Director**

**4.1 Authority and Duties**

- A. Authority. The Executive Director or his designee shall be responsible for the procurement of supplies, services, professional services, and construction, in accordance with this Ordinance, as well as the management and disposal of supplies as authorized by the Board.
- B. Duties. In accordance with this Ordinance, and subject to the supervision of the Board and the assigned Standing Committee, the Executive Director shall:
1. procure or supervise the procurement of all equipment, materials, supplies, services, and construction needed by the District;
  2. develop and implement a written policy for the sale, trade, transfer, or disposal of surplus items which have become obsolete and unusable to the District, upon terms most advantageous to the District. The policy shall be administered by the Office of the Executive Director; establish and maintain programs for specifications development, contract administration and inspection and acceptance, in the District's use of equipment, materials, supplies, services, and construction;
  3. consistent with this Ordinance, and with the approval of the assigned Standing Committee, shall adopt purchasing policies and operational procedures relating to the execution of his duties;
  4. provide or delegate the provision of service in the areas of contracts, negotiation, placement of orders, expediting delivery, and follow-up on orders in such a manner that the maximum value will be obtained per dollar expended;
  5. require project managers to prepare and issue Invitations for Bids (IFB), Requests for Proposals (RFP), and Requests for Qualifications (RFQ), and addenda or corrections thereto;

6. require project managers to conduct pre-bid and pre-award conferences as necessary;
7. require project managers to evaluate bids for proposals and present recommendations for award to the Executive Director, and depending on the cost threshold can approve or will need to provide a written recommendation for an award to the appropriate Standing Committee for review and approval by the Board;
8. utilize all known contacts and sources to expedite deliveries of needed supplies, services and equipment; and
9. periodically review systems and procedures to determine improved methods which result in efficiencies in performance.

#### **4.2 Applicability**

- A. The Procurement Ordinance is applicable to the Board, Executive Director, and all departments and employees of the District.
- B. Procurement Records. All records required by Section 3.1 (Public Access to Procurement Information) shall be maintained by the District.
- C. Correspondence with Vendors. Correspondence concerning matters which precede actual purchasing, such as specifications development, conceptual ideas, and general industry and product application information, shall be maintained by the Project Manager.

### **Article 5: Methods of Procurement and Contract Procedures**

#### **5.1 Procurement Procedures**

##### **A. Determination of Method of Procurement - Approval Thresholds**

Procurement includes the purchase of goods and services through quotes, bids or professional services proposals. Expenditures shall be as provided in the approved budget; or if not specifically provided in the approved budget, shall require approval of the Board to the extent that additional funds or appropriation is necessary. The determination of the method of procurement is made by the cost or nature of that procurement as indicated below.

1. Purchases less than \$1,000.00:
  - a. Require Supervisor approval;

- b. Do not require a quote at the discretion of a Supervisor's approval;
  - c. Do not require Bid Deposits or Performance Bonds; and
  - d. Any purchases made through a governmental purchasing cooperative such as US Communities, National Intergovernmental Purchasing Alliance Company or the State of Illinois' Joint Purchasing Program does not require quotes.
2. Purchases from \$1,000 to \$2,499.99:
- a. Require Superintendent approval; and
  - b. Require three (3) price quotations with the following exceptions:
    - i. any purchases made through a governmental purchasing cooperative such as US Communities, National Intergovernmental Purchasing Alliance Company or the State of Illinois' Joint Purchasing Program does not require quotes; and
    - ii. Bid Deposits or Performance Bonds are not required.
3. Purchases from \$2,500 to \$4,999.99:
- a. Require Division Director approval; and
  - b. Require three (3) price quotations with the following exceptions:
    - i. any purchases made through a governmental purchasing cooperative such as US Communities, National Intergovernmental Purchasing Alliance Company or the State of Illinois' Joint Purchasing Program does not require quotes; and
    - ii. Bid Deposits or Performance Bonds are not required.
4. Purchases from \$5,000 to \$19,999.99:
- a. Require Executive Director approval;
  - b. Require three (3) price quotations; and
  - c. Do not require Bid Deposits or Performance Bonds.
5. Purchases \$20,000.00 and over:
- a. Purchases from \$20,000 to \$99,999.99 require Executive Director

approval to publicly bid with final contract approval granted by the Board.

- b. Contracts of \$100,000.00 or more require prior Board approval to bid, with final contract approval also to be granted by the Board;
  - c. Contracts shall be let to the lowest responsive and responsible bidder after due advertisement except for work requiring professional services, personal confidence, or necessary supplies under the control of monopolies where competitive bidding is impossible.
  - d. In cases where competitive bidding is not necessary or possible, Request for Proposals (RFPs) shall be secured by Staff from appropriate providers for review.
  - e. Public advertisements for Sealed Bids shall be required.
  - f. The Bids are opened at a time and place designated prior to the letting of bids.
  - g. Bid Deposit and Payment and Performance Bonds will be required.  
***Notwithstanding the aforesaid, a one-time purchase of supplies shall not require a performance bond.***
  - h. Awards are to be made to the lowest responsible bidder complying with the terms and conditions of the invitation for bids, request for proposals, or request for quotes.
- B. General Terms and Requirements. (Required for, but not limited to, all purchases equal to or exceeding \$20,000.00.) The general terms and requirements will include, but are not limited to:
- 1. Delivery time.
  - 2. Bid opening date and place.
  - 3. Tax exemption statements.
  - 4. Method of award.
  - 5. Bond requirements
- C. Bidders able to supply products containing recycled materials that meet performance requirements are encouraged to offer them in bids and proposals.

## 5.2 Competitive Sealed Bidding

- A. Conditions for Use. Excepting professional services, all contracts that are \$20,000.00 or greater shall be awarded by competitive sealed bidding.
- B. Bid Package. All bid packages shall include an Invitation to Bid, Instructions to Bidders, General Contract Conditions, Technical Specifications, Special Conditions, if applicable, and a Proposal Form.
- C. Advertisement of Bids. All Bids shall be advertised no less than fourteen (14) calendar days prior to the opening date set forth in the Advertisement for Bids. Such notice shall be published in a newspaper of general circulation. The public notice shall state the place, date, and time of bid opening. All notices that are published in a newspaper shall also be published concurrently on the District's website.
- D. Bid Opening. Bids shall be submitted to the Forest Preserve District of Will County, 17540 W. Laraway Road, Joliet, Illinois 60433, in a sealed opaque envelope. "BID ENCLOSED" and the project title shall be clearly printed on the outside of envelope. The District will receive Bids until the date and time stated in the Advertisement for Bids. Bids will be publicly opened and read in the presence of two or more witnesses at the District Office at that time. Bidder shall assume full responsibility for timely delivery to the Bid Opening location. Bids received after the stated time shall be rejected and returned.
- E. Bid Modification. Bids may not be modified after submittal by the bidder. If the District determines there has been a computation error based on the unit price, the District may modify the bid based on the unit price and quantity listed on the Proposal Form.
- F. Bid Withdrawal. Bids may be withdrawn by written request to the District but not resubmitted before Bid Opening. Bids shall not be withdrawn or modified within sixty (60) days after Bid Opening.
- G. Right to Reject or Accept Bids: The District reserves the right to accept any Bid, any part or combinations of Bids, to waive informalities, and to reject any and all Bids to protect and preserve both the District and the public's best interest. It is the District's intent to award a Contract to the lowest responsible and responsive Bidder provided the Bid does not exceed available funds and has been submitted according to Contract Document requirements. The District reserves the right to accept Alternates in any order or combination and to determine the low Bidder on the basis of the sum of the base bid and the Alternates accepted
- H. Award. Bids will be reviewed by the District and presented to the Board for Award of Contract at their regular board meeting on Date of Award of Contract. The District will issue a written Notice of Contract Award to the successful Bidder.

### 5.3 Request for Proposals

- A. Requests for Proposals. Proposals shall be solicited for all professional service contracts that are in an amount of \$20,000.00 or greater.
- B. Public Notice. Public notice of the request for the proposals shall be given in the same manner as provided in Section 5.2 C (Advertisement for Bid).
- C. Receipt of Proposals. Proposals shall be received up to the date and time specified in the public notice.
- D. Proposal Evaluation. The professional services selection process is governed by the Local Government Professional Service Selection Act (50 ILCS 510). Proposals will be evaluated by a District Evaluation Team (Team) including the Project Manager and at least two other District employees. The Team will review and rank the submitted proposals based upon completeness, project team members, the firm's resources and capabilities, and project understanding. In addition:
  - 1. The Team will select up to three firms to meet with in an interview format to discuss the project and the Consultant's qualifications in greater detail.
  - 2. The selected Consultant will meet with the District to negotiate a final scope of work, project schedule, and fee compensation for the project.
  - 3. The District reserves the right to use its discretion to eliminate proposals that are deemed unacceptable. Only the proposals from responsive and responsible offerors will be eligible for short-list consideration.
  - 4. The District will select a Consultant on the basis of the responsiveness of the proposal to the Request for Proposals and Qualifications requirements and the Consultant's willingness to negotiate and execute an acceptable written agreement.
  - 5. The District reserves the right to reject any, some, or all proposals, and to request written clarification of proposals and supporting materials.
  - 6. The District shall not be liable for any costs incurred by the Consultant in response to the Request for Proposals and Qualifications, or any cost incurred in connection with any discussions, correspondence, or attendance at negotiation sessions.
  - 7. The District will not discriminate on the basis of race, creed, or national origin against any applicant

- E. Award. Professional Service Contracts will be awarded by the Board for contracts in an amount of \$20,000 or greater. Contracts will be awarded based on a scope of services and fee agreed upon as part of the proposal evaluation.

#### 5.4 Non-Competitive Procurement

- A. General. Contracts may be awarded without competitive bidding when the appropriate Committee has determined that the contract by its very nature is not suitable to competitive bids or proposals. Examples of contracts which may not be suitable to competitive bids or proposals are contracts where:
1. there is only one source for the required supply, service, or construction item;
  2. a sole supplier's item is needed for trial use or testing;
  3. purchases of used equipment; and
  4. purchases at auctions.
- B. Negotiation. The Executive Director or his designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.

#### 5.5 Emergency Procurements

Notwithstanding any other provisions of this Ordinance, the Board President, Executive Director, and Division Directors, may make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, or to prevent or minimize serious disruption of government services; provided that each emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. A confirming Resolution, along with the written determination, shall be submitted to the Board of Commissioners for all emergency procurements of \$20,000.00 or more in accordance with Section 8.4 (Approval of Contracts).

#### 5.6 Responsible Bidder or Offeror

- A. Sources for Determining Bidder/Offeror Responsibility

To determine a bidder/offeror's responsibility, the District may use information obtained from a variety of sources including but not limited to the following:

- (1) Completed application form
- (2) Evidence of bonding capacity meeting District's criteria



- (3) Adherence to statutory requirements
- (4) Satisfactory work history and reference checks, including information related to the quality of workmanship and timely project completion
- (5) Satisfactory work and performance history with the District, if applicable
- (6) Previously employment history
- (7) Other sources, including:
  - i. Surety/bonding companies
  - ii. Financial institutions
  - iii. Periodicals
  - iv. Newspapers
  - v. Court records
  - vi. Dun and Bradstreet reports
  - vii. Audited financial statements
  - viii. Any type of public record

Upon request, the bidder/offeror shall timely provide the District with the requested information. The District retains the right to request additional information from the bidder/offeror at any time. In evaluating the above information, greater consideration shall be given to the bidder/offeror's most recent projects and its projects with the District.

**B. Procedures for Determining Bidder/Offeror Responsibility**

Prior to the award of a contract to a bidder/offeror, the appropriate District staff will determine whether the bidder/offeror qualifies as a responsible bidder. Should the District's staff determine that a bidder/offeror is not responsible, it will provide its decision in writing to the bidder/offeror. The bidder/offeror may appeal that decision to the District's Executive Director in accordance with Article 11 and District procedure. The final decision of the bidder/offeror's responsibility shall become a part of the contract file.

**C. Duration a Bidder/Offeror is Deemed Not Responsible**

A bidder/offeror shall retain a "not-responsible" designation for twenty-four (24) months after the District's final decision. Once the twenty-four (24) month period has expired, the bidder/offeror may submit an application with the District to be re-considered as a responsible bidder. All subsequent responsible bidder/offeror determinations shall be processed in accordance with this Section 5.6 and District procedures.

**Article 6: Insurance Requirements on Supply or Service Contracts**

**6.1 Insurance Requirements**

All contractors that provide enhancements and/or services on District property for use by the general public shall supply a Certificate of Insurance including the coverages outlined in the bid or proposal documents. This shall include all competitive and non-competitive quotes, bid contracts, and professional services contracts.

## 6.2 Exceptions

Any exception to the insurance requirements in Section 6.1 will be reviewed, and if appropriate, approved by the Executive Director.

### **Article 7: Types of Contracts and Contract Administration**

## 7.1 Types of Contracts

- A. General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement of and which will promote the best interests of the District may be used, provided that the use of a cost-plus-a percentage-of cost contract is prohibited, unless otherwise required by law.
- B. Multi-Term Contracts, Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any specified period of time deemed to be in the best interests of the District, not to exceed three years, with the exception of leases, licenses or restoration projects, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available 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 thereof.
  1. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
    - a. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
    - b. that such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.
  2. Cancellation Due to Unavailability of Funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

## 7.2 Contract Clauses and their Administration

A. Contract Clauses. All District contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The District may include clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

1. the unilateral right of the District to order in writing changes in the work within the scope of the contract;
2. the unilateral right of the District to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
3. variations occurring between estimated quantities of work in contract and actual quantities;
4. defective pricing;
5. liquidated damages;
6. specified excuses for delay or nonperformance;
7. termination of the contract for default;
8. termination of the contract in whole or in part for the convenience of the District;
9. suspension of work on a construction project for the convenience of the District;
10. site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in the contract:
  - a. when the contract is negotiated;
  - b. when the contractor provides the site or design; or
  - c. when the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price Adjustments

1. Adjustments in price resulting from the use of contract clauses required by Subsection (A) of this Section 7.2 shall be computed in one or more of the following ways:
  - a. by agreement of a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - b. by unit prices specified in the contract or subsequently agreed upon;
  - c. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
  - d. in such other manner as the contracting parties may mutually agree; or
  - e. in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the District, as accounted for in accordance with applicable cost principles and subject to the provisions of Article 11.
2. Notwithstanding the above, all adjustments in price must be in compliance with the provisions of state statute.

C. Standard Clauses and Their Modification. The Executive Director, after consultation with the District's Attorney, may establish standard contract clauses for use in District contracts.

### **7.3 Contract Administration**

A contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

### **7.4 Right to Inspect**

A. Business or Worksite Inspection. The District may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the District.

B. Contract Audit. The District shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by

the contractor or subcontractor for a period of three years from the date of final payment.

#### **7.5 Reporting of Anticompetitive Practices**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District's Attorney for review and direction.

#### **7.6 District Procurement Records**

- A. Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the District in a contract file to be determined by the Executive Director.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the District in accordance with records retention guidelines and schedules approved by the State of Illinois Local Records Commission.

### **Article 8: Contract Execution**

#### **8.1 Fiscal Responsibility**

Prior to the payment of any invoice, contract, change order or contract modification, the Finance Department shall verify that sufficient budgeted funds are available.

#### **8.2 Authorization to Issue Bids or Other Solicitations**

The Executive Director may issue bids or other solicitations for any supply, service, or construction item for which funds have been specifically budgeted.

#### **8.3 Review of Contracts**

The District may request its Attorney to review all contracts prior to award of the final contract.

#### **8.4 Approval of Contracts**

- A. Contracts of \$20,000.00 or more. Contracts for \$20,000.00 or more shall be submitted by the Executive Director to the Board for approval. After award by the Board, contracts shall be signed by the Board President.
- B. Contracts of less than \$20,000.00. Subject to the provisions of Section 5.1A,

the appropriate District Staff shall sign all contracts of less than \$20,000.00 for all purchases when the funds are available within their budget.

- C. Retention Upon Execution. Upon execution of the contract, the Finance Department will be provided with one copy of the executed contract for its retention.

## 8.5 Change Orders and Contract Modifications

- A. Change orders, contract modifications or price adjustments, are subject to approval of the Executive Director for contract changes with an aggregate total less than \$20,000.00, or of the Board for change orders with an aggregate total in an amount of \$20,000.00 or greater. Changes shall not be considered a waiver of Contract conditions.
- B. Change orders that result in an increase from the original Contract price that is fifty percent (50%) or more of the original Contract price or that authorizes or necessitates any increase in the Contract or a subcontract under the Contract that is fifty percent (50%) or more of the original or subcontract price, then that portion of the Contract that is covered by that change order must be resubmitted for bidding in the same order that the original Contract was bid subject to the direction of the Board. The value of any change shall be determined by one or more of the following methods:
1. By an approved Lump Sum.
  2. By Unit Prices given in the Contract or subsequently agreed upon.
  3. By a supplemental schedule of prices incorporated into the Contract.
  4. Time and material plus percentage. This method of cost shall be used on Contractor's actual costs for time and material plus twenty percent (20%) for Contractor's overhead and profit. Contractor's actual costs shall be the direct costs for labor, payroll insurance, payroll taxes, materials, and equipment contract modifications or price adjustments of contracts under Section 7.2 B and C, and may be approved as described in Section 8.5.
- C. The written change orders shall be preserved in the contract file.

## 8.6 Maximum Practicable Competition

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying the District's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.

## 8.7 Additional Contents of Bid Packages

In addition to the bid specifications detailing information as to the specific services, materials, equipment, or supplies sought, the bid package must include prevailing wage act requirements where applicable.

### **Article 9: Bid Security, Performance Bonds, and Insurance Requirements for Construction Contracts**

#### 9.1 Bid Security Requirement

Bid Security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to equal or exceed \$20,000.00. The Bidder shall submit a certified check, bank draft, cashier's check, bid bond or an acceptable irrevocable letter of credit payable to the Forest Preserve District of Will County for not less than 10% of total Bid amount. Bids submitted without Bid Security will not be considered. The Bid Security will be returned to the successful Bidder upon execution of the Contract. Bid securities will be returned to unsuccessful Bidders upon execution of the Contract by the successful Bidder.

#### 9.2 Contract Performance or Payment Bonds

- A. When Required - Amounts. When a construction contract is awarded equal to or in excess of \$20,000.00, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
1. a performance bond satisfactory to the District, executed by a surety company authorized to do business in the State, and acceptable to the District, in an amount equal to one-hundred percent (100%) of the price specified in the contract; and
  2. a payment bond satisfactory to the District, executed by a surety company authorized to do business in the State, and acceptable to the District, for the protection of all persons supplying labor or materials to the contractor or its subcontractors for the performance of the work provided in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.
- B. Term: Bonds shall guarantee the faithful performance of the work in accordance with the Contract, payment of indebtedness incurred for labor and materials, and guaranteed correction of work for a period of one (1) year after final payment. Bonds shall state that the surety waives notice of any change

in the terms of the Contract occurring after the execution and delivery of such bonds. Premiums on bonds shall be paid by Contractor. Bonds shall include provisions to guarantee the faithful performance of prevailing wage laws.

- C. Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the District to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Section 9.2 A.
- D. If at any time the District becomes dissatisfied with the Surety, or for any other reason such Bonds shall cease to be adequate security for the District, Contractor shall within five (5) calendar days after receiving written notice to do so, substitute acceptable Bonds in such form and sum signed by such other Surety satisfactory to the District, at no cost to the District

### **Article 10: Supply Management**

#### **10.1 Supply Management Regulations**

Pursuant to Section 4.1 the Executive Director shall be responsible for developing administrative procedures for:

- A. the management of supplies during their entire life cycle; and
- B. the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation.

#### **10.2 Allocation of the Proceeds from Sale or Disposal of Surplus Supplies**

Proceeds from the sale or disposal of surplus supplies or equipment shall be deposited into the Corporate Fund, with the exception of the sale of vehicles or computer equipment, which will be deposited into their respective Capital Project Funds.

### **Article 11: Appeals and Remedies**

#### **11.1 Bid Protests**

- A. Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. Any protest must be submitted in writing within five (5) business days from the issuance of the solicitation, addendum, notice of award, determination of non-responsive or non-responsible bidder/offeror, or other decision by the Board, Executive Director, or Project



Manager.

- B. Stay of Procurement during Protest. In the event of a timely protest under Subsection (A) of this Section, the Executive Director or the assigned Standing Committee, after consulting with the District's Attorney shall determine whether it is in the best interests of the District to proceed with the solicitation or award of the contract.

## 11.2 Contract Claims

All claims by a contractor against the District relating to a contract, except bid protests, shall be submitted in writing to the Executive Director. The contractor may request a conference with the Executive Director on the claim. Claims include without limitation, disputes arising under a contract, and those based upon modification or rescission.

## 11.3 Authority of the Executive Director to Settle Bid Protest and Contract Claims, Subject to Statutory Provisions

- A. Authority. The Executive Director is authorized to settle any procedural protest regarding the solicitation or award of a District contract prior to an appeal to the Board, or any Committee thereof. The Executive Director, after consulting with the District's Attorney, is authorized to make recommendations on the settlement of any monetary claim to the assigned Standing Committee of the Board for their consideration.
- B. Notice to the Contractor of the Executive Director's Decision. If a protest or claim is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing, and it shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.
- C. Failure to Render Timely Decision. If a written decision is not rendered regarding any protest or claim within ten (10) business days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed with an appeal to the Board as if an adverse decision had been received.

## 11.4 Remedies for Solicitation or Award in Violation of Law

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Executive Director, after consultation with the District's Attorney, determines that the solicitation is in violation of federal, state, or local law, then the solicitation shall be canceled or revised to comply with applicable law.

- B. Prior to Award. If after bid opening or closing date for receipt of proposals, the Executive Director, after consultation with the District's Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or local law, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, Executive Director, after consultation with the District's Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then the matter shall be considered at the next Board meeting.

## **Article 12: Cooperative Purchasing**

### **12.1 Cooperative Purchasing Authorized**

Subject to applicable state statutes, the District may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of materials, equipment, supplies, services, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to other public procurement units.

### **12.2 Sale, Acquisition, or Use of Supplies**

The District may sell, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Article 5 (Methods of Procurement and Contract Procedures).

### **12.3 Cooperative Use of Supplies and Services**

The District may enter into an agreement independent of the requirements of Article 5 (Source Selection and Contract Procedure) with any other public Procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

### **12.4 Use of Facilities**

The District may enter into agreements for the common use or lease of warehouse facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

## **Article 13: Ethics in Public Contracting**

### 13.1 Statement of Policy

Public employment is a public trust. It is the policy of the District to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the District. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the District procurement process. To achieve the purpose of this Article, it is essential that those doing business with the District also observe the ethical standard prescribed herein.

### 13.2 General Standards of Ethical Conduct

- A. General Ethical Standard for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.
- B. General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Article is a breach of ethical standards.

### 13.3 Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of state or federal law, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Article. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Ordinance shall not be impaired.

### 13.4 Employee Conflict of Interest

- A. Conflict of Interest. It shall be unethical for any District employee to participate directly or indirectly in a procurement contract when the District employee knows that:
  - 1. the District employee or any member of the District employee's immediate family has a financial interest pertaining to the procurement contract; or
  - 2. any other person, business, or organization with whom the District employee or any member of a District employee's immediate family is negotiating or has an agreement concerning prospective employment is

involved in the procurement contract.

- B. Financial Interest in a Blind Trust. A District employee or any member of a District employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- C. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Executive Director for an advisory opinion as to what further participation, if any, the employee may have in the transaction pursuant to Section 13.8.

### **13.5 Gratuities and Kickbacks**

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any District employee, or for any District employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any direct or indirect participation in a District bid, proposal, or purchase.
- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any individual associated therewith, as in inducement for the award of a subcontract or order.

### **13.6 Prohibition Against Contingent Fees**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

### **13.7 Contemporaneous Employment Prohibited**

It shall be unethical for any District employee who is participating directly or indirectly in the procurement process to become or to be, while such a District employee, the employee of a person contracting with the District.

### **13.8 Waivers from Contemporaneous Employment**

The Executive Director shall review, with the District's Attorney, any request for an advisory opinion as provided in Section 13.4C, and may recommend to the assigned Standing Committee the granting of a waiver from the employee conflict

of interest provision (Section 13.4) or the contemporaneous employment provision (Section 13.7) upon making a written determination that:

- A. the contemporaneous employment or financial interest of the District employee has been publicly disclosed;
- B. the District Employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the District.

### **13.9 Use of Confidential Information**

It shall be unethical for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

### **13.10 Sanctions**

- A. Employees. Sanctions on a District employee for violations of the ethical standards of this Article shall be imposed in accordance with the District's Ethics Ordinance and employment manual.
- B. Non-Employees. The assigned Standing Committee may impose one or more of the following sanctions on a non-employee for violations of the ethical standards:
  - 1. written warning or reprimands;
  - 2. termination of contracts.

### **13.11 Recovery of Value Transferred or Received in Breach of Ethical Standards**

- A. General Provisions. The value of anything transferred or received in breach of the ethical standards of this Ordinance by a District employee or non-employee may be recovered from both the District employee and the non-employee.
- B. Recovery of Kickbacks by the District. Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or an order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, the amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.