

21ST DISTRICT AGRICULTURAL ASSOCIATION CONTRACT POLICIES, PROCEDURES, AND PRACTICES

WHEREAS, with the passage of AB 2490 in September 2014, the Legislature, in an effort to reduce state oversight and improve economic efficacy, significantly increased the authority of District Agricultural Associations (DAAs) to allow the DAAs to manage and operate their facilities more independently and with greater flexibility.

WHEREAS, as part of this legislative effort, section 4051 of the Food & Agricultural Code was amended vesting DAAs with expanded local authority, especially in the area of public contracting.

NOW THEREFORE, in furtherance of AB 2490 and in accordance with Food and Agriculture Code section 4051(a), the 21st District Agricultural Association (“District”) hereby adopts, effective July 1, 2015, the following Contract Policies, Procedures, and Practices.

I. Definitions:

A. “District” shall mean the 21st District Agricultural Association *aka* the Big Fresno Fair, an entity of the State of California formed by the Legislature to hold fairs, expositions, and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources, and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them; and constructing, maintaining, and operating recreational and cultural facilities of general public interest. [Food & Agricultural Code sections 3871 and 3951.].

B. “Board” shall mean the Board of Directors of the District, consisting of nine directors appointed by the Governor. The Board is the governing body and policy making body for the District.

C. “Premises” shall mean the 165 acres of real property managed and operated by the District under a 50-year lease with the County of Fresno.

D. “Fair” shall mean the annual Big Fresno Fair, which is one of the largest events in the Central Valley, attracting more than 600,000 people each October during its 2-week run featuring exhibits, livestock show, live horse racing, musical entertainment, educational programs and more.

E. “Interim events” shall mean those events held on the Premises other than the Fair. In addition to the Fair, the District hosts over 250 annual events. The largest interim events include the weekly Swap Meet, the annual Hmong International New Year Celebration, and March Home & Garden Show.

F. “Goods” shall mean all types of tangible personal property, including materials, supplies, and equipment, as defined in Public Contract Code section 10290, subd. (d).

G. “Contract” shall mean and include all types of written agreements, contracts, leases, and memorandums of understanding.

H. “Personal Service Contracts” shall have the same meaning as set forth in the California Code of Regulations, title 2, section 547.59, which provides in pertinent part:

(a) A “Personal Services Contract” is defined as any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State.

(b) A “cost-savings based Personal Services Contract” is any Personal Services Contract proposed to achieve cost savings and subject to the provisions of Government Code Section 19130(a).

I. “Public Exigency” shall mean and refer to an emergency situation when the health and safety of the public property or guests in the custody or care of the District are at risk if immediate measures are not taken to resolve the problem situation and it is not possible or practical to convene a Regular, Special or Emergency Meeting of the Board as those terms are defined in the Bagley-Keene Open Meeting Act. (Govt. Code, sections 11120 et seq.)

J. “Sole Source” shall mean and refer to a procurement process in which the good(s) or service(s) are procured from, or are a product of either:

1. Emergencies where immediate acquisition is necessary for protection of the public’s health, welfare or safety or
2. The proposed acquisition of goods or services are the only goods and services meeting the District’s needs and the vendor/contractor is the only vendor/contractor available.

K. “Informal Procurement Process” shall mean the procurement of goods, services, or information technology goods and services by obtaining multiple informal telephone, written and/or internet quotes in accordance with the policies and procedures established by the District.

II. **Contract Policies:**

A. Compliance with Applicable Law: All District contracts must conform to applicable federal, state, and local laws, including but not limited to the Public Contract Code, which was designed to encourage fair competition for public contracts and to aid public officials in the efficient administration of public contracting.

B. Conform to the District's Mission: All contracts shall operate in conformity with the District's goals, objectives, and mission and shall consider the impact of District events and activities on the local community.

C. Written Contract Required: All contracts for the purchase of goods, services, and the use of the District's Premises shall be in writing, free from any type of discrimination and conflict of interest, in compliance with applicable law, duly executed, and approved by the Board or other authorized representative of the District.

D. Board Approval Required: Except for situations where the District's Board has expressly delegated limited authority to the General Manager/Chief Executive Officer (CEO), all contracts must be submitted and approved by the Board in order to be legally binding and effective.

E. Compliance with District's Rules and Regulations: For any event that is to be conducted or performed on the District's Premises, the contract shall incorporate the District's Rules and Regulations.

F. Approval of CDFA and DGS: All contracts that require the approval of the Department of Food & Agriculture (CDFA) and/or the Department of General Services (DGS) must be submitted to CDFA and/or DGS pursuant to Food & Agricultural Code section 4051 *et seq.* to be reviewed and approved prior to being implemented by the District.

G. Contracts for Goods and Services: In accordance with section 4051 of the Food and Agricultural Code, which is not subject to the Part 2, Division 2, Chapter 2 (section 10290 *et seq.*) and Chapter 3 (section 12100 *et seq.*) of the Public Contract Code, all purchases of goods, services, and information technology goods and services, including subcontracts, and involving an expenditure in excess of \$100,000.00; all personal services contracts involving an expenditure in excess of \$5,000.00 and governed by Government Code section 19130, subdivision (a); all construction contracts where the cost exceeds \$25,000.00; and all other contracts required by law to be subject to competitive bidding procedures shall be competitively bid and will be awarded pursuant to one of the competitive bidding procedures described below; unless the contract is entitled to an exemption or exception as defined herein in subparagraphs 2 and 3.

1. Competitive Bidding Process:

a. Invitation for Bid-An Invitation For Bid (IFB) is a public request for bids to provide a specific service or goods and the contract will be awarded to the qualified bidder with the lowest responsive and responsible bid, unless all bids are rejected. The District will provide additional details and definitions for each IFB issued to the extent necessary. When a contract is awarded, a Notice of Award shall be posted in a public place in the District's Administration Office for 5 calendar days.

b. Two Tier Requests for Proposals-A Request For Proposal (RFP) will seek proposals to provide technical services or a specified product or to solve a defined problem. The contract award will be based upon the lowest cost and evaluation of the proposers' technical proposals submitted in response to the RFP. Two Tier RFP's require the submission of technical proposals for evaluation by a selection committee using objective criteria specified in the RFP. Bidders must submit financial proposals in a separate sealed envelope. Proposals will first be evaluated on a technical basis by the selection committee. Bidders whose proposals received the required minimum score during the technical evaluation will have the financial envelope opened. When a contract is awarded, a Notice of Award will be posted in a public place in the District's Administration Office for 5 days calendar days.

c. Competitive Negotiated Procurements-Competitive Negotiated Procurements are initiated by the issuance of: (i) an RFP, (ii) a Request for Expression of Interest (RFEI), or (iii) a letter invitation to pre-qualified proposers (collectively, "Solicitation".) Competitive Negotiation Procurements require the submission of technical proposals for evaluation by a selection committee using objective criteria specified in the Solicitation and price is not the primary or sole selection factor. Bidders must submit preliminary financial proposals in a separate sealed envelope. All proposals submitted in response to the Solicitation must comply with the Solicitation's terms and conditions. After receipt of proposals and completion of an evaluation or selection process, the District may conduct negotiations with one or more proposers with the required qualifications and the most competitive preliminary financial proposals. Best and Final Offers (BAFOs) will be required from the selected qualified proposers upon the conclusion of any negotiations. The contract will be awarded on the basis of a consideration of a combination of technical evaluation and price factors. When a contract is awarded, a Notice of Award will be posted in a public place in the District's Administration Office for 5 calendar days.

2. Protest Procedures:

a. Standing and Grounds for Protests:

(1) Protests can be filed only by a Proposer or Bidder submitting a bid or proposal in response to one of the Competitive Bidding Procedures (IFB, RFP or Solicitation) described in paragraph G.

(2) All protests will be reviewed and decided on written submissions only.

(3) Protests must be based only upon one or more of the following grounds:

- (a) The District violated a law or regulation; or
- (b) The District failed to follow the procedures and adhere to requirements set forth in the competitive solicitation or any addendum thereto.

b. Jurisdiction for Consideration of Protests: There is no jurisdiction for the District to consider a protest if:

- (1) The District rejects all bids or proposals.
- (2) The protestant does not meet the requirements of paragraph 2.a. above.
- (3) The protest was not timely submitted.
- (4) The contract award is for a type of contract not subject to the protest procedures.

c. Procedural Requirements for Protests:

- (1) A protest must be initiated by filing the Notice of Protest in writing with the District's Administration Office by 4:00 PM not later than five calendar days after the posting of the Notice of Intent to Award. The written Notice of Protest must be physically delivered to the District's Administration Office in hard copy. Emailed protests and fax protests are not acceptable and will not be considered. The failure to timely file a protest shall constitute an irrevocable waiver of the Bidder or Proposer's right to protest.
- (2) The Notice of Protest must include the name, address, and telephone number of the protestant and of the person representing the protesting party, if any, and must be signed by the protestant or the protestant's representative. The Notice of Protest may, but is not required to, contain the information described in Paragraph (3) below.
- (3) After filing an Initial Protest, the protestant has five calendar days to file a detailed written statement of the protest grounds if, the Notice of Protest did not contain the complete grounds for the protest. The detailed written statement must be physically delivered in writing to the District's Administration Office by 4:00 PM not later than five calendar days after the Notice of Protest is filed. Emailed and/or faxed detailed written statements are not

acceptable and will not be considered. The detailed written statement must contain a complete statement of any and all grounds for the protest, including, without limitation, all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest. The detailed written protest must refer to the specific portions of all documents which form the basis of the protest.

(4) Any protest not conforming to Paragraphs c. (1) through (3), inclusive, shall be rejected by the District as invalid. The procedures and time limits set forth in Paragraph 2.c. are mandatory and are the protestant's sole and exclusive remedy in the event of any protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code Claim or judicial or other legal proceedings.

(5) During the pendency of a valid protest, the contract may not be awarded until the protest is withdrawn or the District has rendered a decision.

(6) The CEO of the District shall determine if the protest is in conformance with Paragraphs 2.c. (1) through (3), inclusive. Further, the CEO may attempt to informally resolve protests to the satisfaction of all parties before proceeding with the protest. In the event informal efforts to resolve the protest are not successful, the CEO, after determining that the protest is based on permissible grounds and filed in strict conformity with the procedural requirements, shall appoint a hearing officer. The hearing officer may request additional information and specify a time limit for submission of the information. The hearing officer shall determine the matter on all written submissions and submit a recommended written decision to the Board within thirty days of the final submission of evidence and legal authorities.

(7) The District Board will render a final determination and disposition of a protest by taking action to adopt, modify, or reject the hearing officer's recommended written decision. Action by the Board relative to a protest shall be final and not subject to appeal or consideration.

3. Exemptions to Competitive Bidding: The following are exempt from competitive bidding:

a. Utility Services-The item or service to be procured is from a utility company or wholesale utility provider where service connections are

allowed only in geographically defined service territories, or a competitively limited wholesale provider market, or where the work involves a utility system and only the utility company itself is allowed to perform the work.

b. Standard Commercial Off-the-Shelf Software Packages (COTS) or Hardware Products-Procurement of software or hardware products which are ready-made, available for sale to the government and to the general public and designed to be easily integrated into existing systems without the need for extensive customization. COTS software can either be installed on the District's computers or delivered over the Internet.

c. Equipment Maintenance Services-Maintenance Service Agreements provided by the equipment manufacturer or dealers/distributors as a result of a Life Cycle Cost Purchase: the sum of all recurring and one-time, non-recurring, costs over the full life span or a specified period of a good, service, structure or system. It includes purchase price, installation cost, operating costs, maintenance and upgrade costs, and remaining (residual or salvage) value at the end of ownership or its useful life determination or which are not available from a satisfactory alternate source as determined by the District.

d. Software, Software Licenses and Operating System Maintenance Services-in situations where the District has procured software and operating systems for its use, procurement of the continuing maintenance and upgrades of the software and operating systems, training and renewal of software licenses, from the developer or manufacturer.

e. Small Business (SB), Micro Business (MB), and Disabled Veteran Business Enterprises (DVBE)-In compliance with Government Code section 14838.5 procurements in an amount between \$5,000.00 and \$281,000.00 (or any other amount established by a Budget Letter from the Department of Finance), in goods and services from a DVBE, SB or MB certified by the State of California; provided the District obtains at least two price quotations from two or more certified small businesses, including microbusinesses, or from two or more DVBE's.

f. Value less than \$5,000-Procurements of any good(s) or service(s) with a value of less than \$5,000 may be purchased and contracted for with an Informal Procurement Process.

g. Newspapers and Publications Services-Notices and publication services used to post notices required by law or policy, and subscriptions to newspapers, journals, and other periodicals.

h. Contract extensions during Pending Protests-Extension of existing contracts where the goods or services provided under the existing contract are the subject of an ongoing procurement process and completion of a new contract has been delayed as a result of a protest filed in accordance with applicable bid protest procedures.

i. Non-Profit Community Service Agreements-Contracts for the procurement of services acquired from non-profit or not-for-profit organizations to provide services including, but not limited to, clean up, weed abatement, habitat restoration, maintenance, and other similar work within or adjacent to the District's jurisdiction may be entered into by using the Informal Procurement Process.

4. Exceptions to Competitive Bidding: Competitive bidding may not apply if, under the particular circumstances of the procurement, an exception is warranted. The following are examples of circumstances that may be considered in authorizing case-by-case exceptions to the competitive bidding policy:

a. Sole Source-Executive Order W-1-3-94 forbids the use of "sole source" contracts except: in the case of State emergency or where public health and safety so require. Notwithstanding the foregoing Executive Order, in a situation where only one person, firm, or manufacturer exists that can provide the needed goods or services and no equivalent person, firm or manufacturer is available that would meet the District's minimum needs, then sole source may be considered..

b. No Competition-Competition is precluded because of the existence of patent rights, copyrights, secret processes, controlled or limited market or distribution, restricted or limited availability of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.

c. Absolute Compatibility Is Necessary:

(1) The procurement is for replacement part or components for equipment and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part of component to be replaced.

(2) The procurement is for replacement parts or components for equipment and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or

(3) The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no

information and data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

d. Opportunity Purchases-Opportunity purchases from local business that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program. (Food & Ag Code 4051, subd. (b)(1).)

e. Exigency Purchases-In cases of a Public Exigency as defined under “Definitions” above, the District or its CEO may authorize contracts for goods and services in the best interests of the District.

f. Sponsorship Agreements-In accordance with Food & Agricultural Code section 4051.1, the District, pursuant to procedures established by the Board, may enter into agreements to secure donations, memberships, and corporate and individual sponsorships, and may enter into marketing and licensing agreements.

H. SB, MB, and DVBE: It is the policy of the District to encourage Small Business (SB), Micro Business (MB) and Disabled Veteran Business Enterprise (DVBE) prime contractors to participate in the competitive procurement process. SB, MB and DVBE prime contractors, certified by the State of California may receive a 5% preference up to \$50,000 or in some instances a pre-determined scoring incentive on applicable solicitations to be applied when determining an award of contract.

I. Contracts for Activities/Use on the Premises: In accordance with section 3965.1 of the Food and Agricultural Code, the District may contract for any activity involving the use of the District’s Premises, except revenue generating contracts involving hazardous activities as determined by CDFG, unless adequate insurance is provided. In contracting for such activities, the District shall, depending on the circumstances, consider the use a competitive bid process in situations where the duration of the contract is to be greater than one year or where the contract grants to a contractor an exclusive right, and where there is known competition in the market place, unless the contract/activity/use is entitled to an exemption or exception as defined below.

1. Exemptions to Competitive Bidding:

a. Contracts that are Exempt-Contracts that the District is required to enter into as a matter of law or certain types of contracts that are specifically exempt from competitive bidding, for example, entertainment contracts.

b. Police, security, emergency, and fire service contracts-Contracts to safeguard public health and safety.

c. Natural Disaster and Emergency Relief Contracts-In the event of a natural disaster, emergency, or other type of public exigency, the District may contract with relief type organizations, e.g. CalFIRE, CalEMA, Homeland Security, law enforcement, and FEMA, to serve as a command post or to assist and benefit the surrounding community by providing shelter for displaced persons, pets, and livestock.

d. Contracts with Other Governmental Entities: Contracts with other governmental entities, also known as “Inter Agency Agreements”, including, but not limited to federal, state, and local entities, as well as Joint Power Authorities established for the benefit and/or use by the District.

2. Exceptions to Competitive Bidding: Competitive bidding may not apply if, under the particular circumstances of the contracting, an exception is warranted. The following are examples of circumstances that may be considered in authorizing case-by-case exceptions to the competitive bidding policy:

a. Non-Profit Agreements-Contracts for the use of the Premises by a non-profit organization [e.g. 501(c)(3)-“Friends of the Fair”] established for the benefit of the District.

b. Fair-time Vendor Agreements-Short term contracts (not to exceed five years) for the non-exclusive use of a portion of the Premises by vendors or independent contractors during the annual Fair in accordance with Title 3, California Code of Regulations, section 7010 *et seq.*

c. Contract extensions during Pending Protests- Extension of existing contracts where the use of the Premises under the existing contract is the subject of an ongoing competitive bid process and the results of that process have been delayed or protested in accordance with applicable bid protest procedures or by court order.

d. Unique Revenue Generating Agreements-Contracts limited to commercial revenue generating situations where the contractor possesses unique qualifications, to include but not limited to, a sole intellectual property right, a franchise or licensing exclusive, or other unique quality that no other known competitor in the market place possesses or controls.

III. District Contract Procedures and Practices

A. Signed Written Agreement Required: All purchases of goods and services and uses of the District’s Premises and/or its equipment shall be covered by a written agreement

either approved by the Board of Directors or the General Manager/Chief Executive Officer (CEO) or other authorized representative of the District.

B. Delegation of Authority: The Board may delegate authorization to the CEO up to a certain maximum dollar limit per contract without further Board approval provided that the term of the contract is less than (1) year and that any such contract(s) are to be submitted thereafter to the Board for notification at the subsequent Board meeting. Notwithstanding the delegation of authority, the Board is responsible for the contract.

C. Due Diligence Required: No contract shall be entered into without conducting an appropriate due diligence inquiry involving the background of the contractor (to include but not limited to name, type of business entity, license, whether registered with the Secretary of State, and consultation with business references) and the type of event or activity that is the subject of the proposed contract (to include but not limited to the form/type of contract, term and duration of event, hours of operation, any special conditions or issues, whether alcohol is involved, whether it involves any hazardous activity, potential CEQA considerations, liability insurance (CFSA), indemnification, and potential community reaction).

D. Controversial Contracts: Any contract for an event that may potentially involve large crowds, multiple days, incite local opposition or controversy, hazardous activities, or require heightened security shall be presented to the Board for its consideration and approval, regardless of contract amount or delegation of authority.

E. Cost/Benefit Analysis Required: No contract shall be entered into unless the District first performs a financial benefit/cost analysis and the District determines that it will receive a reasonable rate of return for the use of its Premises. The only exception is a contract that involves a charity type event.

F. Adequate Security Required: No event shall be permitted without adequate security. As a minimum, any contract shall provide that security levels will be determined by the District based on such factors as the nature of the event, duration, anticipated attendance, traffic, and other potential impacts on the surrounding community. Depending on attendance, traffic, duration of event, noise, and potential impact on the local community, consultation with local law enforcement should be considered in assessing the need for potential security and/or traffic control.

G. Minimum Terms and Conditions: All contracts of the District shall, at a minimum, contain the following terms and conditions; identify contract process used, name of contractor, business entity (individual, partnership, corporation), state of incorporation (if applicable), term of contract, type of event/activity, financial terms-including security deposit and payment schedule, minimum amount of liability insurance, indemnification, specific security and medical emergency plans (if applicable), traffic and safety plans as conditions precedent that must be satisfied prior to an event/activity taking place, and

incorporate the District's rules and regulations governing events conducted on the Premises.

H. Adequate Oversight Required: The District shall provide adequate oversight over the Contractor's performance of any contract. To ensure adequate oversight, no contract shall be entered into unless the contract allows for District staff or District controlled security to have complete access to the Premises at all times during an event or activity.

I. If in Doubt Seek Advice from Legal Counsel: Pursuant to Government Code section 11040, the Attorney General's Office is legal counsel for the District. Even though the law allows the District, without further State oversight approval, to contract for the procurement of goods and services and for conducting events or activities that take place on the Premises, consultation with legal counsel is encouraged in the contracting process and in drafting the contract.