

**HOLIDAY ISLAND SUBURBAN IMPROVEMENT DISTRICT NO. 1**

**REGULATION 2018-001**

**A REGULATION AMENDING CHAPTER 2, ARTICLE V, DIVISION 3 OF THE CODE OF REGULATIONS TO INCREASE THE PURCHASE VALUE THRESHOLDS WHICH ARE USED TO DETERMINE THE METHOD AND RULES OF PROCUREMENT**

**Section 1:** Chapter 2, Article V, DIVISION 3 is amended and reads as follows:

**DIVISION 3. - PURCHASES AND CONTRACTS**

Sec. 2-185. - HISID board of commissioners to have exclusive power in regard to purchases and contracts.

The HISID board of commissioners, through the HISID district manager utilizing the procedures outlined in this regulation, shall have the exclusive power and responsibility to make all purchases of supplies, apparatus, equipment, materials, services and other items necessary to carry out the public functions for the district, and to make contracts for work or labor to be done, or material or other necessary items to be furnished for the benefit and use of the district, or in carrying out any work or undertaking of a public nature in the district, and ensuring the procedures for the expenditure for any purpose or contract complies with state statutes enacted by the general assembly of the state.

Where the amount of expenditure for any purchase or contract is less than ~~\$10,000.00~~ **\$35,000.00**, the district manager, or designated representative, shall have exclusive power and responsibility to make all purchases of supplies, apparatus, equipment, materials, services and other items necessary to carry out the public functions for the district, and to make contracts for work or labor to be done, or material or other necessary items to be furnished for the benefit and use of the district, or in carrying out any work or undertaking of a public nature in the district.

Sec. 2-186. - Purchases to conform to provisions of division.

All purchases made by the district shall be done in conformity with the provisions of this division.

Sec. 2-187. - Purchases to insure maximum benefit at least cost.

All purchases shall be made in such a manner as to insure that the expenditure of public funds will secure for the property owners of the district the maximum public benefit for the least possible cost.

Sec. 2-188. - Vendors to be treated equally.

In making purchases, the district shall treat each vendor on an equal basis with all others in the consideration of his product and give each vendor or prospective vendor a fair and open opportunity for the business.

Sec. 2-189. - Procedures for purchase of supplies, materials and/or equipment.

In exercising his authority as set forth in section 2-185, the district manager, or designated representative, shall conform to the procedures in this section.

The following procedures shall apply to purchases of or contracts for any supplies, materials and/or equipment for the various offices and departments of the district or for the construction of public improvements:

- (1) All purchases or contracts where the expenditure ~~therefor~~ is less than ~~\$500.00~~ **\$5,000.00** may be made by the district manager, or designated representative, without securing bids.
- (2) All purchases or contracts where the expenditure ~~therefor~~ is ~~\$500.00~~ **\$5,000.00** or more, but less than ~~\$5,000.00~~ **\$10,000.00** may be made by the district manager, or designated representative, after securing three or more informal (oral or written) quotations.
- (3) All purchases or contracts where the expenditure ~~therefor~~ is ~~\$5,000.00~~ **\$10,000.00** or more, but less than ~~\$10,000.00~~ **\$35,000.00**, may be made by the district manager, or designated representative, after the securing of three or more written quotations, provided that the board of commissioners has appropriated, either in the district's annual budget or by other appropriation, the funds from which purchases or contracts shall be paid. If three written quotations are not obtained, the purchase request must show the names of at least three firms contacted in attempting to obtain competition or note the reason three firms were not contacted.
- (4) With the exception of public improvements as defined in A.C.A. § 22-9-203, all purchases or contracts where the expenditure ~~therefor~~ is ~~\$10,000.00~~ **\$35,000.00** or more may be made with the approval of the board of commissioners after the securing formal competitive bids.
- (5) All purchases or contracts for public improvements where the expenditure ~~therefor~~ is ~~\$20,000.00~~ **\$35,000.00** or more may be made with the approval of the board of commissioners after the securing of competitive bids.

Sec. 2-190. - Procedures for securing formal competitive bids, awarding contracts.

All purchases or contracts for public improvements as identified in subsections 2-189(4) and (5) above are subject to the following procedures for securing formal competitive bids.

- (1) The district manager, or designated representative, shall invite formal competitive bidding thereon by legal advertisement published in a minimum of one insertion in a newspaper with general circulation in the county, not less than ten days nor more than 30 days prior to the date fixed for opening such bids. The notice shall give the date, time, and place of opening of bids, and the names or a brief description and specifications of the items for which bids are to be received.
- (2) Not less than ten days in advance of the date fixed for opening the bids, notices and bid forms shall be furnished to all eligible bidders on the bid list for the class of items on which bids are to be received, and to all others requesting them.
- (3) At least ten days in advance of the date fixed for opening bids, a copy of the notice of invitation to bid shall be posted in a conspicuous place at the district office.
- (4) All bids which require formal competitive bidding shall be opened in public and read at the time and place specified in the notice.
- (5) The awarding of contracts need not be upon the day of the opening of the bids but may be at a later date to be determined by the district manager or designated representative.
- (6) All contracts or purchases shall be awarded by the board of commissioners to the lowest responsible bidder, taking into consideration all relevant facts, including, without limitation: quality; time of performance; probability of performance; and location.
- (7) Any or all bids may be rejected by either the district manager or the board of commissioners.
  - a. Where bids are rejected, but the proposed purchase is not abandoned, and the circumstances indicate that further solicitation for bids would be to the best interest of the district, new bids may be called for.
  - b. If the low bid is not accepted, a written statement indicating the reasons for such refusal shall be made by the district manager and submitted to the board of commissioners.
- (8) All bidders shall be given equal consideration under the provisions of this chapter, except that when the bid represents items manufactured or grown in the county or offered for sale by business establishments having their principal place of business in the county with the quality being equal to articles offered by competitors outside the county, then the bidder shall be allowed a differential of not to exceed three percent of the purchase price in determining the low bid. However, in each instance in which this bid preference is requested, the bidder must so indicate before the date and time fixed for opening the bids and thereafter furnish satisfactory proof if requested.
- (9) In all cases where there are equal or tie bids, preference shall be given to residents or firms located and doing business in the county.

- (10) If any bidder to whom a purchase contract is awarded under the provisions of this chapter shall refuse or fail to perform the contract or to make delivery when required by the contract, or shall deliver items which are inferior or do not meet the specifications under the bid, the district may pursue any remedy available at law or in equity, including, without limitation, the voiding of the contract.

Sec. 2-191. - Purchases exempted from soliciting formal competitive bids.

The following listed items may be purchased without soliciting formal competitive bids:

- (1) Perishable foodstuffs for immediate use;
- (2) Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
- (3) Scientific equipment and parts ~~therefor~~;
- (4) Replacement parts and labor for repairs of machinery and equipment;
- (5) Commodities available only from the federal government;
- (6) Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy. However, no such emergency purchase shall be approved unless a statement in writing shall be attached to the purchase justification describing the emergency necessitating the purchase of such commodity without competitive bidding;
- (7) Utility services the rates for which are subject to regulation by a state agency or a federal regulatory agency;
- (8) Commodities or services which can be procured through cooperative intergovernmental agreements with other governmental jurisdictions in accordance with A.C.A. § 19-11-250;
- (9) Sand, gravel, soil, lumber, or used pipe;
- (10) Used or second-hand motor vehicles, machinery, or equipment. Said equipment is defined as motor vehicles, equipment or machinery at least two years in age from the date of original manufacture or that had at least 500 working hours' prior use or 10,000 miles' prior use, with an accompanying statement from the vendor attesting to age, mileage and/or hours' usage.
- (11) Motor fuels; and
- (12) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids.

Sec. 2-192. - Procedures for purchase of legal, accounting, architectural, engineering and land surveying services.

In keeping with A.C.A., tit. 19, ch. 11, subch. 8 [§ 19-11-801 et seq.] it is determined to be the policy of the district that the district shall authorize contracts for legal, accounting, architectural, engineering and land surveying services to be provided to the district on a negotiated basis, and the district shall negotiate contracts for any other professional services when directed by state law.

- (1) The term "district manager" shall refer to the district manager or his designated agent. The term "firm" shall refer to any professional person or a firm of professionals.
- (2) Contracts identified under this section shall be negotiated based on demonstrated competence and qualifications and at fair and reasonable prices.
- (3) All contracts providing for total compensation for services and expenses to be supplied to the district of ~~\$10,000.00~~ \$35,000.00 or less shall be entered into by the district manager provided that the board of commissioners has appropriated, either in the district's annual budget or by other appropriation, the funds from which services shall be paid. All contracts in excess of ~~\$10,000.00~~ \$35,000.00 shall be authorized by the board of commissioners.
- (4) In the procurement of professional services, the district may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance data to the district, or may request such information as needed for a particular public project.
- (5) The district manager shall cause to be published in a newspaper having general circulation in the area a notice indicating that the district will receive, for a 15-day period including the date of notice, statements of qualifications and performance data from appropriate firms who provide professional services such as lawyers, accountants, architects, engineers or land surveyors or other professional services designated in the notice. Submitted statements of qualifications and performance data shall be utilized in the procurement process for service contracts. When the district chooses to solicit statements of qualifications and performance data, a notice shall be so published. Submitted information will be used in the procurement of service contracts by the district. At any time the district enters into the procurement of any contract for professional services, all then current statements of qualification and performance data on file with the district within the past two years from the date of publication notice, and all additional statements of qualification and performance data obtained by or submitted to the district, whether as a result of a published notice or otherwise, shall be evaluated as a part of the contract procurement process.
- (5.1) The district board of commissioners shall create an ad hoc screening committee, comprised of three members, for each professional service being solicited. The purpose of the screening committee is to review the statement of qualifications submitted and recommend to the board of commissioners a short list of three firms with three

alternates. The short list is to be submitted without ranking or priority as a primary short list and three alternate backups serving as a secondary short list. The ad hoc screening committee shall be comprised of the district manager, and to the greatest extent possible, one department head and one resident property owner whose working backgrounds are as germane as possible to the service being solicited. The district manager shall select the individuals to serve on the committee. Upon entering into a contract with the professional service, the ad hoc screening committee shall be dissolved.

- (6) From the available statements of qualifications and performance data, the district shall select three qualified firms for consideration with reference to the anticipated issuance of a contract for services. From the three qualified firms, there shall be selected the firm considered the best qualified and capable of performing the desired work. Both in the selection of the three qualified firms and in the selection of the firm considered the best qualified and capable, consideration shall be given to the following factors:
  - a. The specialized experience and technical competence of the firm with respect to the type of professional services required;
  - b. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
  - c. The past record of performance of the firm with respect to such factors as control of costs, quality of work and ability to meet schedules and deadlines; and
  - d. The firm's proximity to and familiarity with the area in which the project is located.
- (7) After the selection of the firm most qualified and capable of performing the desired work, the district manager shall, jointly with the selected firm, prepare a detailed, written description of the scope of proposed services. Such written description shall be used as the basis for the negotiation of the contract for services. The district manager shall then enter into negotiations with the selected firm. If the district manager is unable to negotiate a satisfactory contract with such firm, the unsuccessful negotiations shall be terminated and negotiations shall commence with another of the selected qualified firms. If negotiations are again unsuccessful, negotiations shall be conducted with the third qualified firm. If the district manager is unable to negotiate a contract with any of the three selected firms, the district manager shall re-evaluate the necessary professional services, including the scope and reasonable fee requirements anticipated by the contract, and, after completing that process, proceed in accordance with the provisions of this division.
- (8) If at the time of commencement of procurement of a professional services contract there is available from all sources less than three statements of qualifications and performance data, the procedures outlined above shall take place with reference to the then available statements of qualifications and performance data.

Sec. 2-193. - Procedures for purchase of all other services.

The following procedures shall apply to all contracts for services, other than those expressly provided for in section 2-192 of this division, to be rendered to the district:

- (a) The district manager is authorized to enter into any such contract for services where the expenditure ~~therefor~~ is not more than ~~\$10,000.00~~ \$35,000.00 after soliciting and reviewing written proposals from interested and qualified providers of such services. Such written proposals shall include a statement of the scope of services to be provided, qualifications of the providers of the service, fees and charges, and any other information the district manager may require.
- (b) The district manager is authorized to secure competitive bids for any such contract for services where the expenditure is ~~\$10,000.00~~ \$35,000.00 or more. Such written bids shall include a statement of the scope of services to be provided, qualifications of the providers of the services, fees and charges, and any other information the district manager may require. Any contract to be executed for services shall require approval of the board of commissioners.
- (c) Any written proposal for services received under the provisions of this subsection (c) shall be retained by the district for a period of three years.

Sec. 2-194. - Disposal of district property.

Any supplies, materials or equipment owned or controlled by the district may be sold or exchanged by the district manager, providing the estimated fair market value does not exceed ~~\$5,000.00~~ \$10,000.00. Should the estimated fair market value exceed ~~\$5,000.00~~ \$10,000.00, the district manager shall invite competitive bidding thereon by legal advertisement in a newspaper having general circulation in the area, and the sale or exchange so awarded by the board of commissioners to the highest and best bid.

Sec. 2-195. - Authorization to participate in state contracts.

Pursuant to Arkansas' State Purchasing Law (A.C.A. 1987 section 19-11-201), the district manager, on behalf of the district, is authorized to participate in state contracts which the department of finance and administration, office of state purchasing, has entered into for the purchase of supplies, services, equipment and certain materials pursuant to the State Purchasing Law and amendment 54 to the Arkansas Constitution. The district manager is authorized to agree in the name of the district to be bound by all contract terms and conditions prescribed by the office of state purchasing, and to directly pay the vendor, under such state contract in which the district participates, for items it receives pursuant to the contract.

Sec. 2-196. - Authorization to purchase state and federal surplus property.

The district manager is authorized, on behalf of the district, to purchase surplus property from the state Department of Finance and Administration's Marketing and Redistribution Division, and federal surplus property offered by the General Services Administration through the Arkansas State Agency for Surplus Property (Arkansas SASP) and to obligate any necessary funds of the district for purchasing property from those agencies.

Sec. 2-197. - Donations.

- (a) All proposed donations to the district must be reviewed by the district manager prior to formal acceptance by either the district manager or the board of commissioners in accordance with this section. The term "donation" includes all monetary gifts, equipment, land, buildings, personal services, or any other item.
- (b) All donations up to ~~\$5,000.00~~ \$10,000.00 in value must be approved by the district manager. All donations over that amount in value must be approved by the board of commissioners. The following criteria will be considered by the district when determining acceptance of all non-monetary donations:
  - (1) Age, condition and operational compatibility of the donation;
  - (2) Suitability of any restrictions placed on the donation; and
  - (3) Likelihood of significant ongoing maintenance costs associated with the donation.
- (c) All donations accepted by the district will become the irrevocable property of the district to be used at its discretion. In cases where restrictions are placed upon the use of donations, the donor must specify in writing all such instructions as to the desired use of these donations prior to district acceptance. All donations other than monetary gifts must be accompanied by written instructions and/or restrictions as to their use and must include a statement of estimated value by the donor.

**Section 2:** Severability Clause: The sections, paragraphs, sentences, clauses, and phrases of this Regulation are severable, and if any phrase, clause, sentence, paragraph, or section of this Regulation, or its application to any persons or circumstances, shall be declared unconstitutional, invalid, or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Regulation or their application.

**Section 3:** All regulations or parts of regulations conflicting with any of the provisions of this regulation are hereby repealed to the extent of such conflict.

**Section 4:** Effective date.

This regulation shall become effective immediately upon passage.

First Reading: August 20, 2018

Second Reading: September 17, 2018



Passed this 17th day of September, 2018.

Signed:

Holiday Island Suburban Improvement District No. 1



Commissioner David Makidon, Chair

Attest:



Commissioner Linda Graves, Secretary