

RESOLUTION NO. 2014-14

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SELMA-KINGSBURG-FOWLER COUNTY SANITATION DISTRICT
ESTABLISHING PROCEDURES FOR BID PROTESTS**

WHEREAS, Ordinance No. 2014-02 requires that every contract subject to competitive bidding thereunder be let to the lowest, responsive and responsible bidder, or the Board may reject any and all bids presented and may re-advertise in its discretion; and

WHEREAS, competitive bidding ensures economy and excludes favoritism; and

WHEREAS, the District desires to establish a process to ensure the fairness of competitive bidding; and

WHEREAS, the District desires to establish a procedure for (i) evaluation of bids; (ii) making a staff determination of award, including the rejection of the lowest bid(s) received based on a finding of non-responsiveness and/or non-responsibility, and (iii) affording the respective bidder the opportunity to file a bid protest.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Selma-Kingsburg-Fowler County Sanitation District as follows:

The following procedures shall apply in all instances involving a contract required to be competitively bid pursuant to Ordinance No. 2014-02.

SECTION 1. District Engineer's Review.

The District Engineer shall review the bids submitted, prepare a written recommendation, and submit it to the General Manager. Recommendations may include:

A. Recommendation to award to lowest responsive and responsible bidder.

(1) A responsive bidder is one who submits a bid which meets the requirements of the bid specifications.

(2) A responsible bidder includes, but is not limited to, one who possesses the skill, judgment, financial or functional ability, or integrity to perform satisfactorily the proposed contract.

B. Recommendation to award to other than lowest bidder.

If the recommendation is to award to other than the lowest bidder, written justification shall be submitted to the General Manager with the recommendation to declare the lowest

bidder(s) non-responsive and/or non-responsible and award the bid to the next lowest bidder who is responsive and responsible.

SECTION 2. General Manager Review.

The General Manager shall review the District Engineer's recommendation to determine whether he concurs that there may be sufficient justification to find that the lowest bidder(s) may be non-responsive and/or non-responsible and of staff's proposed determination of bid award.

If the General Manager concurs, he shall direct the District Engineer to notify the low bidder(s) of the intent to reject his/her/their bid ("Notice of Intent to Reject"), and of the basis for the notice. The notice shall also notify the lowest bidder(s) that she/he/they may file a bid protest on the issues of non-responsiveness and non-responsibility within five (5) business days.

In addition, the proposed determination of the lowest, responsive and responsible bidder for award of the contract, hereinafter "Notice of Proposed Award" shall be posted on the District's website and bulletin board a minimum of ten (10) calendar days prior to the Board's action.

The District Engineer shall make available for inspection the bid proposals of bidders under the same bid file number immediately following posting of staff determination, except for those portions of a bidder's proposal marked confidential as proprietary or trade secrets and otherwise exempt from disclosure under the Public Records Act.

SECTION 3. Bid Protest Procedures.

A. Filing of Bid Protest

1. Unless a time period other than five (5) business days for filing an appeal is expressly provided in the bid specifications, any and all bid protests must be received in writing within five (5) business days from the issuance of the Notice of Intent to Reject or the posting of the Notice of Proposed Award, whichever is applicable.

2. All bid protests must be filed, in writing, with the General Manager. An appeal will only be considered and accepted by the General Manager if timely and sets forth in detail specific, verifiable facts and description of all evidence relied upon, including copies of relevant documents, that:

a. Rebut the District Engineer's determination that the low bidder is non-responsive and/or non-responsible as contained in the Notice of Intent to Reject; or

b. That the District Engineer's determination of contract per the Notice of Award is to a bidder other than the lowest responsive and responsible bidder; or

c. That the District Engineer determination of contract award was made outside the procedural requirements for submitting and opening bids.

3. A copy of the bid protest and all supporting documents must also be transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

4. A bidder who wishes to protest the Notice of Award or Notice of Intent to Reject or to the filing of a bid protest by another bidder may submit a written response to the protest, provided the response is received by the District before 3:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.

5. The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

B. Hearing Officer Determination of Bid Protest.

1. If an acceptable bid protest is received within the specified time, the bid protest shall be heard by a Hearing Officer.

2. If the bid protest involves an issue of non-responsiveness, the General Manager will serve as Hearing Officer regardless of the size of the contract.

3. If the bid protest involves an issue that bidder is non-responsible and a contract in an amount less than \$2,000,000, then the Hearing Officer will be the General Manager.

4. If the bid protest involves an issue that bidder is non-responsible and a contract for public work of improvement in an amount equal to or greater than \$2,000,000, then the Hearing Officer will be a person having a minimum of five years experience as a licensed attorney in the State of California, selected by the General Manager.

For purposes of this subsection, the contract amount will be determined by the amount of the lowest bid received. In the case of multiple acceptable appeals from bidders, the hearing will be heard by the same Hearing Officer.

C. Notice of Hearing.

1. The hearing shall be scheduled as soon as practicable after the appeal is received, to take place not less than five (5) calendar days, and not more than fifteen (15) calendar days from the last bid protest is received, provided that such time shall be extended by

mutual agreement of the parties. Notice of the date and time of the hearing shall be given to all bidders at least two calendar days prior to the hearing, unless such time is shortened upon written agreement by all parties.

2. In the case of multiple acceptable bid protests from bidders whom staff has determined may be non-responsive and/or non-responsible, the Hearing Officer shall hear the subsequent appeals in sequence beginning with the appeal filed by the lowest non-responsive or non-responsible bidder.

SECTION 4. Hearing Rules.

A. Purpose.

The purpose of the hearing shall be to evaluate the bidder's responsiveness to the bid specifications and the bidder's responsibility (i.e., whether she/he is qualified to perform satisfactorily the proposed contract). Additionally, the hearing may be to evaluate whether the proposed award is outside the procedural requirements for submission and opening of bids.

B. Procedure.

The bidder(s) who have filed an acceptable bid protest shall be notified that she/he/they may be present in the hearing, may present any relevant evidence, and that there is no need or requirement to be represented by counsel. Hearings shall be recorded by a recording device or court stenographer at the discretion of the General Manager. Any interested party may arrange with the stenographer to record the hearing at the party's cost.

C. Rules of Evidence.

1. All relevant oral and written evidence is admissible.
2. Each party may produce witnesses and introduce exhibits on any matter with relevant to the issues.
3. Cross-examination, other than as permitted by the Hearing Officer, shall not be permitted.
4. The hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions in California.

5. Copies of the reports and records of any governmental agency, division, or bureau will be accepted as evidence in lieu of the original thereof.

SECTION 5. Effective Date. This resolution shall be effective on the date of adoption.

CERTIFICATION

The foregoing resolution was introduced by Director Perea, seconded by Director Derr, and adopted on roll call on June 12, 2014 by the following vote:

AYES:	Directors Cardenas, Karstetter, Derr, Perea and Chairwoman Case McNairy
NOES:	None
ABSTENTIONS:	None
ABSENCES:	None



Ben Muñoz, Jr.,
Secretary of the Board of Directors