



TAUD MODEL PURCHASING POLICY – NEW May 2023

Section 1. Purpose and Authority of General Manager.

- (a) _____ Utility District (the District) adopts this Purchasing Policy (the Policy) to obtain goods and services for the operation of the District using procurement methods designed to provide fair and competitive pricing to meet the District's quality and performance standards. This Purchasing Policy establishes provisions for all purchases, leases, lease-purchases and contracts for goods and services consistent with the District's needs and Tennessee law. Unless noted otherwise, purchases, leases, lease purchases and contracts for goods and services will be collectively referred to as "purchases" in this Purchasing Policy.
- (b) The General Manager shall serve as District's central purchasing and contracting authority and will be responsible for the interpretation and application of the provisions of this Policy.

Section 2. Methods of Procurement.

- (a) Purchase by competitive sealed bids.
- (b) Purchase by competitive quote bids.
- (c) Purchase by competitive sealed proposals.
- (d) Purchase by request for qualifications.
- (e) Purchases exempt from competitive bidding under Sections 11 and 12.
- (f) Open market purchases.

Section 3. Vendor List.

Requests for competitive sealed bids and requests for competitive quote bids will be solicited from vendors on vendor list of the Tennessee Association of Utility Districts (TAUD) in the TAUD Official Purchasing Guide.

Section 4. Competitive Sealed Bids.

- (a) Competitive sealed bidding will be used for purchases over \$25,000.
- (b) Requests for sealed bids will be in writing. The General Manager will prepare or approve a request for sealed bid. A request for sealed bid will include clear and

accurate specifications which permit a vendor to submit an appropriate bid for the purchase and which promotes competition.

- (c) A request for sealed bid will be sent to at least three prospective bidders on the vendor list in the TAUD Official Purchasing Guide. Public notice of the request for sealed bid may be provided to prospective bidders by mail, email or other electronic communication, publication on the District's website, publication in newspapers of general circulation, publication in trade and industry publications or websites, and any other methods of providing notice of opportunities to bid which may be customarily used for the type of contract being offered or the type of goods or services being purchased. The District will not require small businesses and minority-owned businesses to receive request for bids electronically.
- (d) When deemed appropriate by the General Manager, the District may prequalify prospective bidders for a specific contract or purchase.
- (e) Sealed bids will be submitted to the District on or before the bid submission deadline and in the manner designated in the request for sealed bid. Late bids will not be accepted.
- (f) Pursuant to T.C.A. § 12-4-113, the District will not modify or amend its request for sealed bid less than forty-eight (48) hours before the bid opening date and time, excluding weekends and legal holidays, unless the bid deadline is extended for a reasonable time as determined by the General Manager which extension will not be less than forty-eight (48) hours excluding weekends and legal holidays.
- (g) Any questions about the request for sealed bid or other bidding documents must be received by the District's General Manager or his or her designee no less than ninety-six (96) hours before the bid opening date and time.
- (h) Bids will be opened publicly at the time and place and in the manner designated in the request for sealed bid.
- (i) Bids will not be rejected because they contain minor informalities or irregularities. A minor informality or irregularity is one which: (1) is merely a matter of form and not of substance; or (2) pertains to some immaterial or inconsequential defect or variation of the bid from a requirement in the request for sealed bid which is not prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the goods or services being procured.
- (j) The District reserves the right to reject all bids in its sole discretion.
- (k) Purchases by competitive sealed bids will be awarded by the District's Board of Commissioners to the lowest qualified and responsible bidder as set forth in Section 6.

- (l) The Board may delegate the authority to award a contract or purchase by competitive sealed bids to the District's General Manager under the circumstances and within the parameters deemed appropriate by the Board. When the General Manager awards a contract or purchase to a vendor other than the lowest bidder pursuant to such delegation, the General Manager will prepare a memorandum for the bid file setting forth the reasons the contract or purchase was awarded to a vendor other than the lowest bidder.

Section 5. Competitive Quote Bids.

- (a) Competitive quote bids will be used for purchases between \$10,000 and \$25,000.
- (b) The General Manager will prepare or approve a request for quote bid which will include a bid submission deadline. A request for quote bid will include clear and accurate specifications which permit a vendor to submit an appropriate bid for the purchase and which promotes competition.
- (c) A request for quote bid will be sent to at least three prospective bidders on the vendor list in the TAUD Official Purchasing Guide. Public notice of the request for quote bid may be provided to prospective bidders by telephone, mail, email or other electronic communication, publication on the District's website, publication in newspapers of general circulation, publication in trade and industry publications or websites, and any other methods of providing notice of opportunities to bid which may be customarily used for the type of contract being offered or the type of goods or services being purchased. The District will not require small businesses and minority-owned businesses to receive request for quote bid electronically.
- (d) Bids will be submitted to the District on or before the bid submission deadline and in the manner designated in the request for quote bid. When the District's request for quote bid permits vendor bids by telephone, the vendor must submit a written confirmation of the telephone bid in the form required by the General Manager. The District will not require small businesses and minority-owned businesses to submit bids electronically. Late bids submitted after the deadline may be rejected by the District.
- (e) The District will make its decision on which bid to accept after the bid submission deadline.
- (f) The District reserves the right to reject all bids in its sole discretion.
- (g) When the District accepts a bid, the District will notify the vendor in writing of its acceptance.

- (h) Purchases procured by competitive quote bids will be awarded by the District's Board of Commissioners to the lowest qualified and responsible bidder as set forth in Section 6. When the Board awards a contract or purchase to a vendor other than lowest bidder, the minutes of the Board meeting will state the reasons the contract or purchase was awarded to a vendor other than the lowest bidder.
- (i) The Board may delegate the authority to award a purchase procured by competitive quote bids to the District's General Manager under the circumstances and within the parameters deemed appropriate by the Board. When the General Manager awards a contract or purchase to a vendor other than the lowest bidder pursuant to such delegation, the General Manager will prepare a memorandum for the bid file setting forth the reasons the contract or purchase was awarded to a vendor other than the lowest bidder.

Section 6. Award to Lowest Qualified and Responsible Bidder.

- (a) Goods and services purchased by competitive sealed bids or competitive quote bids will be purchased from the lowest qualified and responsible bidder. In determining who is the lowest qualified and responsible bidder, the District may consider the following factors in addition to the price quoted:
 - (1) ability to provide the goods or perform the services;
 - (2) ability to provide the goods or services promptly, within the time specified, or without delay or interference;
 - (3) ability to provide for future maintenance and service of the goods or services;
 - (4) financial ability to provide the goods or perform the services;
 - (5) conformity with bid specifications;
 - (6) quality of goods or services;
 - (7) life expectancy and maintenance costs;
 - (8) discount for prompt payment;
 - (9) freight costs;
 - (10) delivery date and terms;
 - (11) past performance for the District and other utilities; and
 - (12) other pertinent factors.
- (b) The District is not obligated to purchase goods and services from the bidder with the lowest price when the factors outlined in this Section 6 warrant an award to one other than the bidder with the lowest price. When the Board awards a contract or purchase to a vendor other than lowest bidder, the minutes of the Board meeting will include the reasons the winning vendor was selected.

Section 7. Cancellation or Withdrawal of Request for Sealed Bids, Request of Quote Bids or Request for Competitive Sealed Proposals

In its sole discretion, the District may cancel or withdraw any request for sealed bid, request for quote bid, or request for competitive sealed proposals at any time before the bid or proposal submission deadline, and any responses received will be automatically rejected.

Section 8. Record of Bid Purchases.

When the purchase goods or services requires competitive bidding under this Purchasing Policy, the District will keep a file on the bid purchase. The bid file will include all written documentation related to the bid purchase transaction, including the request for bids, written bids submitted, written confirmation of telephone bids submitted, correspondence related the request for bids and submission of bids, correspondence related to the purchase or contract award, purchase invoice, bid bonds, the contract awarded, payment and performance bonds and any other written documents created or received in connection with the bid purchase. The bid file may be kept as an electronic file.

Section 9. Provisions for Construction Contracts.

- (a) Request for bids and bid openings for construction contracts procured by competitive sealed bids will comply with provisions of T.C.A. § 62-6-119. When the construction contract is for a project being financed by a grant or loan from a state or federal agency, the District must comply with the competitive bidding regulations of these agencies for their grant and loan recipients.
- (b) Bid Bonds. A bid bond is a guarantee issued by a surety company from a bidder on a construction contract to ensure the District is compensated if the bidder fails to honor the terms of its bid.
 - (1) The District may require bidders to submit a bid bond for competitive sealed bids for construction contracts. Whenever a bid bond is required, the bid bond requirement and the amount of the bid bond will be stated in the request for sealed bid. The bid bond must be provided by a surety company authorized to do business in the State of Tennessee and must be in a form satisfactory to the District.
 - (2) The amount of any required bid bond will be determined by the District in an amount equal to at least five percent (5%) but not greater than ten percent (10%) of the total amount of the competitive sealed bid.
 - (3) In accordance with T.C.A. § 62-6-129, the bid bond submitted for competitive sealed bids for construction manager services will be equal to ten percent

(10%) of the value of the services proposed and the value of the work to be managed.

- (4) Bid bonds submitted by unsuccessful bidders will be returned upon the award of the construction contract or construction manager services contract.
- (5) When a request for sealed bid requires a bid bond, noncompliance will be grounds for rejecting the bid, unless the District determines that the bidder's failure to comply is insubstantial to the security requirements.

(c) Performance and Payment Bonds.

- (1) When a construction contract is awarded in excess of \$100,000, the contractor will provide a performance bond satisfactory to the District on or before the execution of the contract to guarantee the contractor will perform its obligations to the District according to the terms and conditions of the contract. If the contractor fails to do so, the surety company will assume the contractor's obligations under the contract. The performance bond will be executed by a surety or insurance company authorized to do business in the State of Tennessee and listed on the United States Department of Treasury's List of Approved Sureties, in an amount equal to one hundred percent (100%) of the price specified in the contract and accompanied by a certified power of attorney.
- (2) When a construction contract is awarded in excess of \$100,000.00, the contractor will provide a payment bond satisfactory to the District on or before the execution of the contract for the protection of all persons supplying labor and materials to the contractor or its subcontractors under the contract. If the contractor fails to do so, the surety company will assume the contractor's obligations to pay all person supplying labor and materials to the contractor or its subcontractor. The payment bond will be executed by a surety or insurance company authorized to do business in the State of Tennessee and listed on the United States Department of Treasury' List of Approved Sureties in an amount equal to one hundred percent (100%) of the price specified in the contract and accompanied by a certified power of attorney.
- (3) Nothing in this section shall be construed to limit the District's authority to require a bond or other security in addition to the bonds required in this Section 9(c).
- (4) Whenever a performance bond or payment bond is required, the bond requirement and the amount of the bond will be stated in the request for sealed bid.

(5) To the extent permitted by T.C.A. § 12-4-201(c), in lieu of the bonds required by this Section 9, the following securities or cash may, in the District's discretion, be substituted at the percentage rates required for the bonds:

(A) United States treasury bonds, United States treasury notes, and United States treasury bills;

(B) General obligation bonds of the State of Tennessee;

(C) Certificates of deposit or evidence of other deposits irrevocably pledged from:

- (i) A state or national bank having its principal office in Tennessee;
- (ii) A state or federal savings and loan association having its principal office in Tennessee;
- (iii) Any state or national bank, that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; or
- (iv) Any state or federal savings and loan association that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits;

(D) A letter of credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits. The terms and conditions of any letter of credit shall be subject to the District's approval. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code or the ICC Uniform Customs and Practice for Documentary Credits (UCP 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter; or

(E) Cash; provided, that, where cash is posted, the District shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to T.C.A. § 9-4-704, for the contract period.

Section 10. Competitive Sealed Proposals.

- (a) Purchases by competitive bidding may not be practical or advantageous to the District when qualifications, experience or competence are more important than price in making a purchase. Upon recommendation by the General Manager, the Board of Commissioners may use competitive sealed proposals (request for proposals) for purchases of more than \$25,000 when qualifications, experience or competence are more important than price in making a purchase.
- (b) Competitive sealed proposals may only be used in the following circumstances.
 - (1) When there is more than one solution to a purchasing issue and the use of competitive sealed proposals will assist in choosing the best solution.
 - (2) When there is no readily identifiable solution to a purchasing issue and the use of competitive sealed proposals will assist in identifying one or more solutions.
 - (3) The procurement of construction management services in conformity with the provisions of T.C.A. 12-4-107(b).
- (c) Requests for proposals (RFP) may be provided to prospective proposers by mail, email or other electronic communication, publication on the District's website, publication in newspapers of general circulation, publication in trade and industry publications or websites, and any other methods of providing notice of opportunities to vendors to respond to competitive sealed proposals which may be customarily used for the type of contract being offered or the type of goods or services being purchased.
- (d) The RFP will be prepared by the General Manager. The request will state the factors to be used to evaluate the proposals, including price, and will state their relative importance in the evaluation. The RFP will state that the evaluation all of the stated factors will determine whose proposal is the most advantageous to the District. The RFP may state that price will be separately submitted and included in the evaluation through a multi-step process. A multi-step process may include submission of pricing before or after the evaluation and any discussion of the proposals with the proposers.
- (e) The competitive sealed proposals will not be disclosed during the negotiation and evaluation process which follows their submittal and opening. The competitive sealed proposals will be made open for public inspection after the intent to award the contract to a particular proposer is announced.
- (f) After the competitive sealed proposals are submitted, the District may conduct discussions to clarify a proposal or to assure a full understanding of the proposal and its responsiveness to the District's requirements. When the District conducts these discussions, all responding proposers whose proposals are reasonably capable of

being selected must be afforded fair and equal treatment in these discussions. During these discussions, the District may not disclose to one proposer information derived from competing proposals.

- (g) When discussions occur, proposers may be allowed to revise their proposals so that the District may obtain the best and final offer from each proposer provided any revisions are submitted and received before the District's intent to award to a particular proposer is announced.
- (h) The Board of Commissioners will award the purchase to the responsible proposer whose proposal is the most advantageous to the District taking into consideration price and the evaluation factors set out in the RFP. No other factor may be used in the Board's evaluation.
- (i) An aggrieved proposer who is not selected may file a protest to the award with the District within seven (7) days after the intended award is announced. The Board will consider any protest filed at its next regular Board meeting or at a specially called Board meeting for the purpose of considering the protest.
- (j) When the purchase of goods or services is made by competitive sealed proposals, the District will keep a file on the purchase by competitive sealed proposals. The file must include a statement containing the basis on which the award was made. The file will include all written documentation related to the purchase transaction, including the RFP, the competitive sealed proposals submitted, correspondence related to the competitive sealed proposals submitted, correspondence related to the purchase or contract award, purchase invoice, bid bonds, the contract awarded, payment and performance bonds and any other written documents created or received in connection with the competitive sealed proposal purchase. The competitive sealed proposal purchase file may be kept in an electronic form.
- (k) When a construction contract is awarded in excess of \$100,000 by competitive sealed proposals, the contractor will comply with the performance bond and payments bond provisions set forth in Section 9(c).

Section 11. Request for Qualifications.

- (a) Contracts for architectural and engineering services must be procured using the request for qualifications process set forth in this Section 11.
- (b) Contracts for professional services covered by T.C.A. § 12-3-1209 may be procured using a request for qualifications process.
- (c) The Board of Commissioners will establish a selection committee to oversee and conduct the request for qualifications process.

- (d) The selection committee will prepare and issue a request for qualifications (RFQ) to seek qualifications and experience data from any firm or firms and may interview such firm or firms. When the services to be provided require licensing in Tennessee, the selection committee may only seek qualifications and experience data from licensed Tennessee firms.
- (e) The selection committee shall evaluate statements of qualifications and experience data regarding the procurement of the services and shall conduct discussions with such firm or firms regarding the furnishing of required services. Then, the selection committee will select the firm deemed to be qualified to provide the services required.
- (f) The selection committee shall negotiate a contract with the qualified firm at compensation which the selection committee determines to be fair and reasonable to the District. In making such determination, the selection committee shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature of the services. The contract negotiated by the selection committee must be approved by the Board of Commissioners.
- (g) If selection committee is unable to negotiate a satisfactory contract with the firm considered to be qualified at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached.
- (h) If the Board of Commissioners does not approve the contract negotiated by the selection committee, the selection committee will continue with other qualified firms until an agreement is reached.
- (i) When the District has a satisfactory existing working relationship for architectural or engineering services with an existing firm, it may expand the scope of the services with this firm without engaging in a request for qualifications for the expanded services, provided the services are within the technical competency of the existing firm.

Section 12. Exceptions to Competitive Bidding – Utility District Law.

The following purchases are excepted from the District's competitive bidding requirements pursuant T.C.A. §§ 7-82-801 and 803.

- (a) Purchase of items or groups of items less than \$10,000.
- (b) Contracts to provide a continuous work force through independent contractors for the maintenance, installation, and repair of the system or for items sold at retail by the District.
- (c) Purchase of goods or services for which there is a single source of supply.

- (d) Purchases for immediate delivery in actual emergencies arising from unforeseen causes.
- (e) Purchases of real property.
- (f) Purchases from any federal, state, or local government unit or agency.
- (g) Purchases from instrumentalities created by two or more cooperative governments similar to the Local Government Data Processing Corporation.
- (h) Purchases from non-profit corporations whose primary purpose is to provide goods or services to various local governments.
- (i) Purchases in the open market, including fuel and fuel product purchases.
- (j) Purchases of items for resale.

Section 13. Exceptions to Competitive Bidding – Other Tennessee Statutes.

The following purchases are excepted from the District's competitive bidding requirements pursuant to other Tennessee statutes applicable to utility districts.

- (a) Contracts for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards which shall be procured in accordance with the provisions of T.C.A. § 12-3-1209.
- (b) Contracts for architectural and engineering services and contracts for construction management services which shall be procured pursuant to the provisions of T.C.A. § 12-4-107(a).
- (c) Contracts for construction management services which shall be procured pursuant to the provisions of T.C.A. § 12-4-107(b).
- (d) Contracts for energy-related services that include both engineering services and equipment and have as their purpose the reduction of energy costs in public facilities shall be awarded on the same basis as contracts for professional services pursuant to T.C.A. § 12-4-110.
- (e) Multi-year contracts for painting and other maintenance of water storage tanks may be procured through a request for proposals process pursuant to the provisions of T.C.A. § 12-4-112.
- (f) Insurance purchased through a plan authorized and approved by any organization of governmental entities representing Tennessee cities and counties.

- (g) Goods and services included in vendor contracts of the Tennessee Department of General Services in accordance with T.C.A. § 12-3-1201(a) and (b).
- (h) Goods and services included in vendor contracts of the Tennessee Department of General Services purchased from a local source in accordance with T.C.A. § 12-3-1201(d).
- (i) Goods and services included in vendor contracts of the federal General Services Administration in accordance with T.C.A. § 12-3-1201(c).
- (j) Used and secondhand goods from governmental agencies in accordance with T.C.A. 12-3-1202(a).
- (k) Used and secondhand goods from private individuals or entities in accordance with T.C.A. 12-3-1202(b) when the cost of the purchased item is no more than five percent (5%) higher than the general range of value of the item as documented by a listing in a nationally recognized publication or by an appraisal of a licensed appraiser which documentation should be attached to the seller's invoice.
- (l) Goods and services purchased by another local government for the District in accordance with T.C.A. § 12-3-1203(a).
- (m) Goods and services purchased at same price as in the contracts of other Tennessee local governments in accordance with T.C.A. § 12-3-1203(c).
- (n) Goods and services purchased under a cooperative purchasing agreement with other Tennessee local governments in accordance with T.C.A. § 12-3-1205(a).
- (o) Goods and services purchased under a cooperative purchasing agreement with out-of-state local governments or federal government agencies in accordance with T.C.A. § 12-3-1205(b).
- (p) Goods and services permitted to be purchased by competitive reverse auction in accordance with T.C.A. § 12-3-1208.
- (q) Goods purchased at public auction in accordance with T.C.A. § 12-2-421.
- (r) Used or surplus personal property of other local governments, the State of Tennessee or the federal government obtained by the gift, purchase or transfer in accordance with T.C.A. § 12-2-420.

Section 14. Open Market Purchases.

Open market purchases include the purchase of goods and services under \$10,000 which do not require competitive bidding under this Purchasing Policy.

Section 15. **[Optional]** Authority Thresholds to Make Purchases.

(a) General Manager.

- (1) The General Manager is authorized to make open market purchases under \$10,000.
- (2) The General Manager is authorized to make purchases which are exempt from competitive bidding under Sections 12 and 13 up to \$_____.
- (3) The General Manager is authorized to make emergency purchases exempt from competitive bidding under Section 12(d) up to \$_____.

(b) Office Manager. The Office Manager is authorized to make purchases under \$_____ ***[include any other conditions here]***.

(c) *Other authorizations for other employees if desired.*

Section 16. **[Optional]** Procedures for Purchases

(a) *All purchases will be made using the District purchasing system software (for those which use such software);*

or

(a) *Include a written description of the current purchase requisition and approval process the District follows or desires to follow*

(b) *Include a description of the method by which approved purchases can be made: contract, purchase orders, purchase cards, credit cards, petty cash etc.*