SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. V-D**

FROM: Steve Mack, General Manager

MEETING DATE: July 10, 2013

Subject: DISCUSSION/ACTION RE PROPOSED CHANGES TO PURCHASING AND CONFLICT OF INTEREST POLICIES

RECOMMENDED ACTION: Receive a presentation on proposed changes to Policy Number 3700 Bidding and Purchasing and Policy Number 1020 Conflict of Interest.

FISCAL IMPACT: none expected.

DISCUSSION:

The annual audits of the past few years have pointed out that the District does not follow its purchasing policy as stated in Policy Number 3700. Review of the policy has shown that it has inconsistent direction as well as practices that are no longer followed. In the process of trying to fix the existing policy, District Legal Counsel, David Warner, suggested modeling a revised purchasing policy on that of the City of Healdsburg and that is what we have done. The existing policy and the proposed revised policy is shown as Attachment A and A.1. We believe this revised policy incorporates the important elements of the existing policy – it changes no purchasing limits – and is much more straightforward and easy to follow.

The changes to Policy Number 1020, Conflict of Interest are necessary because the County of Sonoma has changed its procedures which allows it to delegate some responsibility for filing statements of economic interests to municipalities and special districts. These changes are small and should have little impact on District operations. The existing policy and the proposed policy are shown as Attachment B and B.1.

Please review these proposed changes. If acceptable to the Board we plan to introduce the ordinance changing the policies at the August 1 meeting and adopt the ordinance at the September meeting.

Attachment A. Existing Purchasing Policy

3700 Bidding and Purchasing

Date Approved: February 9, 1993
Date Revised: September 5, 2002

3700.10 This policy is intended both to state mandatory requirements and to eliminate and avoid all procedures and practices not herein made mandatory, even though the District may from time to time and for its own purposes give additional notices or time for submission of proposals, or may add other non mandatory procedures. Failure to follow any procedure proposed or directed by resolution or motion or by the order of the district management will not invalidate or affect any purchase, sale, lease or contract unless expressly required by state law.

3700.20 Competitive Bids on Construction: Except as hereinafter otherwise provided, all works shall be constructed and all contracts for the construction of work shall be let pursuant to competitive bids and the work shall be performed by the contractor who shall be found and determined by the Board of Directors of the district to have presented the lowest responsible bid in each instance. This section does not apply to purchase of materials, supplies, equipment or land.

3700.30 Competitive Bids Not Required: Work and improvements (including new construction, repair, maintenance and replacement) shall not require competitive bids in the following cases:

3700.31 Work and improvements done by the district itself by force account. This will include both work and improvements initially so undertaken and that upon which bids may have been received and rejected.

3700.32 Work and improvements to be done by contract upon which the estimated cost including labor and materials is less than twenty-five thousand dollars ($25,000.00).

3700.40 Force Account: The expression “force account”, as used in this policy, is intended to and shall refer to and include all work in which the district determines or directs the method and the timing of performance, as distinguished from specifying and requiring results with inspection. This will ordinarily encompass work done by the regular employees of the district, but it will also include work done by contractors and other new employees who may be employed for specific jobs, if and so long as their performance is under the full control of the district and if the district reserves the right to stop the work or to increase or decrease it without the consent of such contractor or other employee.

3700.50 Notice of Call for Bids: When competitive bids for construction are to be received, plans and specifications shall be filed and notice of call for bids shall be given as follows:

3700.51 Plans and specifications for such proposed works or structures shall first be prepared and filed with and approved by the Board of Directors.

3700.52 If and when such plans and specifications have been approved by the Board, it shall direct the notices inviting bids therefore which shall be given in the manner herein provided, and it shall at such time fix the time and place for receiving and opening such bids.

3700.53 Unless the Board shall specifically direct otherwise, each such notice inviting bids shall be signed by the secretary of the district and shall be published once in a newspaper of general circulation printed, published and circulated in the District or in Sonoma County, at least ten (10) days prior to the date fixed for receiving and opening bids. Such notice may also be published in one or more trade journals published and circulated in the San Francisco Bay Area, but such publication is not required.

3700.54 At the time and place fixed for the opening of such bids, they shall be publicly opened and declared by the district engineers and the contract therefore shall thereafter be awarded by the Board of Directors to the lowest responsible bidder; provided, however, that the finding and determination of the Board of Directors as to which bid is the lowest responsible bid shall be final and may be based in part or wholly upon the experience, personnel, qualifications, equipment, facilities and the readiness of the contractor to perform the work; and provided further that the matter of opening and declaring such bids or the matter of awarding such contract may be postponed by the Board (or if there be no quorum, then by the clerk of the board or secretary) from time to time for a period not exceeding sixty days; and provided further that the bids may be rejected in their entirety, with our without cause; and that if the board does so reject all bids, it may call for new bids.

3700.55 In the event the Board shall so determine, it may reject all bids and either abandon the work or call for new bids, or it may reject all bids and determine that the work shall be done by “force account”.

3700.56 Whenever any project shall involve the expenditure of bond or special assessment funds, or any funds derived from state or federal sources, the provisions of law or contract applicable thereto shall be complied with.

3700.57 Except as provided in subsection 3800.53 hereof, the Board of Directors may in any case determine that the welfare of the district requires that time be shortened and in such case may direct that notice be published not less than five days prior to the date fixed for receiving and opening bids.

3700.60 Board Approval of Plans and Specifications Prior to Notice of Call for Bids not Required: The General Manager need not obtain the Board of Directors’ approval to advertise plans and specifications for construction when the project has previously been approved and budgeted by the board or when there is an emergency. In case of emergency, and subject to ratification by the Board of Directors prior to the bid award, the General Manager may approve the plans and specifications, order them filed and, if time is available, direct publication of the notice inviting bids once in a newspaper of general circulation printed, published and circulated in the District or Sonoma County at least five days prior to the date fixed for receiving and opening bids.

3700.70 Informal Quotations: Whenever a contract is not required by this policy to be let upon competitive bid, the Board of Directors or General Manager may elect to call for informal quotations before letting a contract thereon. No call or advertisement for such quotations shall be deemed to bring the project under standard competitive bidding rules nor shall the district be required, or in such case, to award to the lowest responsible bidder or at all.

3700.80 Movable or Personal Property: No project involving the construction, improvement, repair or alteration of movable or other personal property shall require competitive bids. The Board may, if it so determines in any instance, direct the filing of plans and specifications for any such construction, repair or alteration and, in such event, the procedures set forth in Section 3800.40 and 3800.50 of this policy may be followed. Unless the board shall specifically so direct, however, this class of work shall be performed by the forces of the district, or may be performed by any contractor, upon a contract or under purchase order without calling for or receiving any competitive bids thereon.

3700.90 Real Property Belonging to District: Real property belonging to the district shall be disposed of, sold or transferred only as the Board of Directors may prescribe, but unless otherwise prescribed in any case, the following procedures therefor shall be followed:

3700.91 A notice shall be given by the Clerk of the Board (Secretary) stating that the district proposes to sell certain described property and stating the time and place when sealed bids will be received thereon.

3700.92 The Board of Directors shall fix the time and place for the receipt of such bids and shall instruct the Clerk of the Board (Secretary) with respect thereto.

3700.93 Such notice calling for sealed bids shall be published at least once in a newspaper of general circulation printed, published and circulate within the District or County of Sonoma, State of California, at least ten days prior to the date fixed for the receipt and opening of such bids.

3700.94 Upon the receipt of such bids and at the time and place fixed therefor, the same shall be publicly opened and declared by the Board of Directors and the property sold to the highest bidder therefor, provided, however, that the Board may reject all bids and retain the property or determine that bids shall again be called for.

3700.95 Nothing herein set forth shall apply to any easement, license or lease of land for a term of fifty years of less; provided that such easement, license or lease and all use thereunder shall be subordinate to use of such land by the District for the major purposes of the district.

3710.00 Movable or Personal Property Belonging to the District: Movable or personal property belonging to the district shall be disposed of, sold or transferred as follows unless otherwise prescribed by the board of directors.

3710.10 Items with an estimated salvage value of less than ten thousand dollars may be sold at public auction conducted by the District or its authorized agent.

3710.11 Items not considered suitable for auction can be used as a trade-in or disposed of in any manner approved by the General Manager.

3710.12 Items not disposed of under subsections 390.91 and 3900.92 above, shall be disposed of, sold or transferred pursuant to the same procedures applicable to real property set forth in 3900.80 above.

3720.00 Purchase of Real Property - Eminent Domain: If and whenever the Board of Directors shall determine that the District requires and should purchase real property, or any interest therein, it shall do so without any call for bids and in such manner as may be specified in each instance. In the event the board shall so determine, it may in any instance proceed with eminent domain proceedings.

3730.00 Purchase of Supplies, Consultant, Service Contracts and Equipment: Materials, supplies, equipment and other personal property, generally shall be approved by the Board of Directors or be within specified budget limits for the expenditure. All purchase orders over $10,000.00 shall be reported to the Board of Directors not later than the second regular meeting after authorization. The following purchases may be made by the designated authority provided sufficient funds remain in the budget category. All other purchases shall be authorized by the Board of Directors unless otherwise directed by the provisions of this policy as outlined below:

Type	Authority Required	Dollar Limit
Purchase Order for materials, supplies services & equip.	General Manager or Field Supervisor	$5,000.00
Purchase Order for materials, supplies, services & equip.	General Manager	$15,000.00
Purchase Order for specifically budgeted items.	General Manager	$30,000.00
Amendments/extensions of existing contracts, or emergency situations provided sufficient funds remain in the budget category	General Manager	$ 5,000.00

3730.20 In case of an emergency requiring immediate procurement of pipe, fittings, materials, equipment, supplies or other personal property or contracted services, the General Manager or designated employee may proceed to acquire such as is reasonably required. All such emergency purchases shall be reported to the Board of directors (not later than the second regular meeting following the date of such approval).

3730.30 No competitive bid shall be required for any of the purchases to be made under subsection 3830.20 above, or for any consultant or services contract. Purchase Orders shall not be split to avoid dollar limitations. Cumulative issuance of purchase orders that exceed authorized limits shall not be made without Board approval.

3730.40 Whenever practical and equal competitive products are available, informal quotations thereon shall be taken from at least three competitive manufacturers or dealers before any purchase is made in excess of five hundred dollars unless exception has been approved by the General Manager. These competitive quotations shall be reported to the Board of Directors. The Board of Directors may then make such purchases based on these informal quotations, or any other quotations, as the Board may think best or it may direct the procurement of additional informal quotations. All specific notices calling for bids are hereby dispensed with and declared to be unnecessary and inadvisable for the purchase of personality, except as informally procured by mailed or telephoned notice. No informal or other quotations in advance of purchase shall be required unless expressly called for by action of the Board of Directors.

3740.00 Requisitions, Payment Requests and Demands: Use of Purchase Orders. Purchase orders shall only be required for equipment, tools, furniture and vehicles that individually have an original total cost of more than $300.00. All purchase orders shall be approved by the General Manager.

Attachment A.1. Proposed Purchasing Policy

SWEETWATER SPRINGS WATER DISTRICT
Policy Title: **Bidding and Purchasing**
Policy Number: 3700
Date Approved: February 9, 1993
Date Revised: September 5, 2002
Date Revised: September 5, 2013

Sections:

3700.10 Purpose of purchasing policies and procedures.

3700.20 Definitions.

3700.30 Purchasing officer designated and duties established.

3700.40 Procedures for purchases of less than $25,000.

3700.50 Procedures for purchases of more than $25,000 – Formal sealed bids.

3700.60 Purchasing award.

3700.70 Purchasing award – Factors to be considered.

3700.80 Exceptions to this section.

3700.90 Splitting orders prohibited.

3700.100 Prevailing wages.

3700.110 Inspection and testing of purchases.

3700.120 Surplus supplies and equipment.

3700.130 Surplus real property.

3700.140 Purchase of Real Property - Eminent Domain.

3700. 10 Purpose of purchasing policies and procedures.

The purpose of this section is to (A) establish efficient and effective processes for the purchase or lease of services, supplies, materials and equipment at the lowest feasible cost commensurate with the level of quality required; (B) exercise financial control and accountability over purchases; and (C) clearly define authority for the purchasing function. In adopting the ordinance codified in this section, it is the intent of the District to responsibly manage public funds and provide responsibility for, and consistency in, implementing purchasing policies and procedures.

3700.20 Definitions.

As used in this section, the following terms shall have the meanings described below:

A. "District" means the Sweetwater Springs Water District, including the political entity and its geographical boundaries.

B. "Excluded goods or services" means goods or services (as described below) in which any District official or District employee has a financial interest.

C. "Goods or services" means services, supplies, materials and equipment that are the subject of this section.

D. "Purchasing officer" means the District General Manager or designee of the District General Manager.

E. "This section" means Section 3700

3700.30 Purchasing officer designated and duties established.

A. The District General Manager is designated as purchasing officer for the District.

B. The District General Manager may delegate all or a portion of the duties of purchasing officer to any District staff member. The purchasing officer shall have the authority to:

3700.31. Purchase, or contract for the sale or lease of, goods or services required by the District in accordance with purchasing procedures established in this section and other applicable law;

3700.32. Negotiate and recommend execution of contracts for purchase or lease of goods or services in accordance with purchasing procedures established in this section and other applicable law;

3700.33. Act to procure for the District the necessary quality in goods or services in accordance with the provisions of this section and other applicable law;

3700.34. Prepare and recommend to the District Board amendments to the purchasing rules;

3700.35. Establish and maintain such forms as reasonably necessary to the purchasing function and maintain other records necessary for the efficient acquisition of goods or services;

3700.36. Supervise the inspection of all goods or services purchased or leased by the District to ensure conformance with specifications;

3700.37. Recommend and oversee the sale or disposal of all goods or services which cannot be used by the District, or which have become unsuitable for District use;

C. Purchase agreements up to an amount of $25,000 may be authorized and executed by the purchasing officer. Purchase agreements of $25,000 or more shall be authorized by the District Board.

3700.40 Procedures for purchases of less than $25,000.

A. For purchases of goods or services of less than $25,000, or that are not subject to other laws and/or procedures, the purchasing officer shall use the following procedures:

3700.41. For purchases of goods or services having an estimated value of $1,000 or less, informal quotes may be obtained from vendors but are not required.

3700.42. For purchases of goods or services having an estimated value of more than $1,000, but less than $25,000, firm quotes either received in writing or taken verbally but confirmed in writing shall be obtained. At the discretion of the purchasing officer, the competitive bid process described in 3700.50 may be used for the acquisition of goods or services having an estimated value of more than $1,000, but less than $25,000.

3700.50 Procedures for purchases of more than $25,000 – Formal sealed bids.

When the estimated amount of value involved in a purchase transaction exceeds $25,000, the authorization to award a purchase contract shall be made by District Board resolution following a sealed competitive bid process as outlined below:

3700.51. A notice inviting bids shall be prepared and shall include a general description of the goods or services to be purchased or sold, where bid instructions and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond, or other security, such as performance, payment or maintenance bonds, will be required.

3700.52. A notice inviting bids shall be advertised at least twice in a newspaper of general circulation in the District with the first publication being at least 10 days prior to the opening of bids.

3700.53. When required by law or deemed appropriate by the purchasing officer, and if included in bid instructions, bidders may be required to submit a bid deposit or bond in an amount determined by the purchasing officer. Bidders shall be entitled to return of bid security, except that a successful bidder (and a successful bidder's surety, if a bid bond is required) shall be liable for any damages suffered or incurred by the District upon refusal or failure to execute a contract within 10 days after the notice of award of contract has been mailed, unless the District is responsible for the delay.

3700.55. The District Board may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the District Board awards the contract to the next lowest bidder following a forfeit of the bid security by the lowest bidder, the amount of the lowest bidder's bid security shall be applied by the District to the difference between the low bid and the second lowest bid; the surplus, if any, shall then be returned to the lowest bidder.

3700.56. When deemed appropriate by the purchasing officer, and if included in bid instructions, any person or entity entering into a contract with the District may be required to furnish a faithful performance deposit or bond in an amount determined by the purchasing officer.

3700.57. Sealed bids shall be submitted to the purchasing officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

3700.58. In its sole discretion, the District Board may reject all bids presented and readvertise for bids.

3700.60 Purchasing award.

In awarding a contract for goods or services that is subject to this section, the following procedures and policies shall be applied:

A. Except as may otherwise be provided in this section, contracts that are subject to this section shall be awarded to a responsible bidder who submits the lowest responsive bid.

B. If two or more bids received from responsible bidders are for the same total amount or unit price, quality and service being equal the purchasing officer or District Board (depending on who will make the award) may accept the lowest bid made by negotiation with the tie bidders.

3700.70 Purchasing award – Factors to be considered.

A. In determining bid responsiveness, the purchasing officer or District Board (depending on who will make the award) shall consider whether the bid documents are completed as required and the bid generally conforms to the bidding requirements. The purchasing officer or District Board may waive any bid nonconformities in accordance with applicable law. Any conditions or qualifications included by a bidder in a bid will be considered when determining whether a bid is responsive.

B. In its discretion, the purchasing officer or District Board (depending on who will make the award) may use any of the following criteria in evaluating the responsibility of bidders:

3700.71. The ability, capacity and skill of the bidder to perform the contract or provide the service required.

3700.72. The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference.

3700.73. The reputation and experience of the bidder, including the District's previous experience with the bidder.

3700.74. Prior and current compliance by the bidder with applicable law, including, without limitation, compliance with any applicable licensing requirements.

3700.75. The sufficiency of the bidder's financial and staffing resources for performing the contract or providing the goods or services.

3700.76. The quality, availability and adaptability of the supplies or contractual services to the particular use required.

3700.77. The ability and availability of the bidder to provide future maintenance/service.

3700.78. Any conditions or exceptions attached to the bid by the bidder.

3700.080 Exceptions to this section.

A. The following conditions constitute sufficient cause to dispense with the bidding requirements of this section and such requirements shall not apply to:

3700.81. Contracts for professional or expert services, such as, but not limited to, services rendered by architects, attorneys, engineers, and other specialized consultants.

3700.82. Goods or services which can be provided by only one supplier or only from one source due to a patent or copyright.

3700.83. Contracts for advertising, ordinary travel expense items, and subscriptions to trade publications or other publications used by the District for a public purpose.

3700.84. Situations where no bids have been received following bid announcements or all bids received exceed budget appropriations or costs estimates.

3700.85. Emergency conditions which involve a sudden, unexpected occurrence or discovery of a condition or circumstance that poses a clear and imminent danger requiring immediate action and that compels placing an order with the most expedient source of supply.

3700.86. Contracts for janitorial services for District buildings and facilities.

3700.87. Products or services for which other public agencies have gone through a competitive bidding process and are able to have the bid prices they received extended to the District. These "cooperative purchasing" or "piggyback purchasing" agreements (including, but not limited to, CCOP State Department of General Services, U.S. General Services Administration, any county, and state cooperative purchasing pools) in which the District is eligible to participate may be used in lieu of any bidding requirements under this section.

3700.88. When the estimated value of the goods or services is less than $1,000.

3700.89. When the District Board specifically waives the competitive bid process and authorizes staff to negotiate the purchase.

B. This section is expressly made inapplicable to bids for public projects as defined by the state of California in the Public Contracts Code, Section 20160, et seq.

3700.90 Splitting orders prohibited.

It is unlawful to split or separate into smaller orders the purchase of goods or services for the purpose of evading the competitive bidding provisions of this section. For goods or services which are purchased repeatedly throughout a year, the bidding procedures used shall be consistent with the estimated cumulative expenditures during a 12-month period.

3700.100 Prevailing wages.

Potential bidders for goods and services that are subject to the requirements of the California Prevailing Wage Law (California Labor Code Section 1720, et seq.) shall be notified of the applicability of prevailing wage requirements in the bid documents and shall comply therewith.

3700.110 Inspection and testing of purchases.

The purchasing officer is authorized to order the inspection of supplies and equipment delivered and services performed to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

3700.120 Surplus supplies and equipment.

At such times as determined by the purchasing officer, reports shall be prepared showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer shall have the authority to sell, trade or exchange all supplies and equipment. All surplus property valued at more than $10,000.00 requires a District Board resolution declaring it surplus. Upon declaration of an asset as surplus, the District General Manager shall have the authority to dispose of supplies and equipment in whatever manner shall best serve the interests of the District.

3700.130 Surplus Real Property Belonging to District.

Surplus real property belonging to the District shall be disposed of, sold or transferred only as the Board of Directors may prescribe, but unless otherwise prescribed in any case, the following procedures therefore shall be followed:

3700.131. A notice shall be given by the Clerk of the Board stating that the District proposes to sell certain described property and stating the time and place when sealed bids will be received thereon.

3700.1342. The Board of Directors shall fix the time and place for the receipt of such bids and shall instruct the Clerk of the Board with respect thereto.

3700.133. Such notice calling for sealed bids shall be published at least once in a newspaper of general circulation printed, published and circulate within the District or County of Sonoma, State of California, at least ten days prior to the date fixed for the receipt and opening of such bids.

3700.134. Upon the receipt of such bids and at the time and place fixed therefore, the same shall be publicly opened and declared by the Board of Directors and the property sold to the highest bidder therefore, provided, however, that the Board may reject all bids and retain the property or determine that bids shall again be called for.

3700.135. Nothing herein set forth shall apply to any easement, license or lease of land for a term of fifty (50) years of less; provided that such easement, license or lease and all use thereunder shall be subordinate to use of such land by the District for the major purposes of the District.

3700.140 Purchase of Real Property - Eminent Domain.

If and whenever the Board of Directors shall determine that the District requires and should purchase real property, or any interest therein, it shall do so without any call for bids and in such manner as may be specified in each instance. In the event the Board shall so determine, it may in any instance proceed with eminent domain proceedings.

Attachment B. Existing Conflict of Interest Policy

1020 Conflict of Interest

Date Approved: _____
Date Revised: October 7, 2004

1020.10 The Political Reform Act, Government Code Section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices commission are hereby incorporated by reference and, along with the attached Appendix "A" in which members of the Board of Directors and employees are designated, and in which disclosure categories are set forth, constitute the conflict of interest code of the SWEETWATER SPRINGS WATER DISTRICT.

1020.20 Designated employees shall file statements of economic interests with the clerk of the County of Sonoma.

Attachment B.1. Proposed Conflict of Interest Policy

1020 Conflict of Interest

Date Approved: _____
Date Revised: October 7, 2004

1020.10 The Political Reform Act, Government Code Section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices commission are hereby incorporated by reference and, along with the attached Appendix "A" in which members of the Board of Directors and employees are designated, and in which disclosure categories are set forth, constitute the conflict of interest code of the SWEETWATER SPRINGS WATER DISTRICT.

1020.20 ~~Designated employees~~Board Members and the General Manager shall file statements of economic interests with the clerk of the County of Sonoma. All other designated employees shall file statements with the Clerk of the Board for the Sweetwater Springs Water District.