



**SONOMA VALLEY HEALTH CARE DISTRICT  
BOARD OF DIRECTORS**

**AGENDA**

**THURSDAY, DECEMBER 9, 2021,**

**SPECIAL SESSION 6:15 p.m.**

**TO BE HELD VIA ZOOM VIDEOCONFERENCE**

**To Participate Via Zoom Videoconferencing**

**Please use the link below:**

<https://sonomavalleyhospital-org.zoom.us/j/99204837666?pwd=Nm1WMHhuYkptMnp1TStVamFEL2RsUT09&from=addon>

**and enter the Meeting ID: 992 0483 7666, Passcode: 234041**

**To Participate via Telephone only,**

**dial: 1-669-219-2599 or 1-669-900-9128**

**and enter the Meeting ID: 992 0483 7666, Passcode: 234041**

<p>In compliance with the Americans Disabilities Act, if you require special accommodations to participate in a District meeting, please contact District Clerk Jenny Fontes at <a href="mailto:jfontes@sonomavalleyhospital.org">jfontes@sonomavalleyhospital.org</a> at least 48 hours prior to the meeting.</p>		
<p align="center"><b>AGENDA ITEM</b></p>	<p align="center"><b>RECOMMENDATION</b></p>	
<p><b>MISSION STATEMENT</b> <i>The mission of SVHCD is to maintain, improve, and restore the health of everyone in our community.</i></p>		
<p><b>1. CALL TO ORDER</b></p>	<p><i>Rymer</i></p>	
<p><b>2. PUBLIC COMMENT</b> <i>At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Board consideration.</i></p>	<p><i>Rymer</i></p>	
<p><b>3. AGREEMENT TO TERMINATE ODC CONTRACTOR</b></p>	<p><i>Rymer/Hennelly</i></p>	<p>Action</p>
<p><b>4. EXCEPTION FOR EMERGENCY CONTRACT</b></p>	<p><i>Rymer/Hennelly</i></p>	<p>Action</p>
<p><b>5. ADJOURN</b></p>	<p><i>Rymer</i></p>	

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement And Release (“Settlement Agreement”) is entered into by and between: (1) Sonoma Valley Hospital Health Care District (“SVH”); and (2) Dome Construction Corporation (“DOME”). SVH and DOME shall collectively be referred to as the “Parties.”

### **RECITALS**

A. WHEREAS, SVH and DOME entered into a written contract entitled “Design Build Agreement” dated January 6, 2020 (“Contract”) wherein DOME agreed to design and build the Sonoma Valley Hospital Outpatient Diagnostic Center located at 347 Andrieux Street, Sonoma, California (“Project”).

B. WHEREAS, a dispute arose regarding the Project wherein SVH asserted that DOME failed to properly design and timely complete the Project. DOME, on the other hand, contends that it properly designed the Project and is due time extensions for delays caused by SVH.

C. WHEREAS, except as set forth herein below, the Parties desire to settle and resolve their respective disputes, claims, damages, rights, duties, liabilities and obligations related to and/or arising out of the Project (collectively, "Resolved Matters").

D. WHEREAS, the Parties hereby, with the intention of resolving and releasing all claims arising out of or related to the Project, enter into this Settlement Agreement to formally memorialize the terms of the settlement as set forth below.

E. WHEREAS, the Parties declare that each has read this Settlement Agreement and understands and knows the contents thereof, and represents and warrants that each of the Parties executing this Settlement Agreement is empowered to do so and hereby binds the respective party.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

### **COVENANTS AND AGREEMENTS**

1. **Incorporation of Recitals.** The Parties incorporate the above Recitals by this reference as material terms to the Parties Covenants and Agreements.

2. **Terms of Settlement.** The Parties agree as follows:

2.1 **Settlement Payment.** SVH shall pay to DOME Seven Hundred Fifty-Nine Thousand Three Hundred Eighty-Nine Dollars and Zero Cents (\$759,389.00) as full and final settlement of any and all claims by DOME after the execution of this Settlement Agreement and within 7 calendar days of the completion of certain provisions of this settlement:

1. DOME’s release of all as-built plans to SVH.
2. SVH’s receipt of unconditional lien waivers for Dome and all Dome’s subcontractors and consultants.
3. Dome’s furnishing of unconditional waiver and release(s) for progress payments

made to Peterson Mechanical, Inc. (PMI) and Blakeslee as outlined in 2.2.

4. Dome's release of any retentions due to PMI and Blakeslee.
5. Deliverables listed in Appendix A entitled: *Final Deliverables to Owner to be transmitted electronically and on a thumb drive to "Sonoma Valley Hospital, Attention: Kimberly Drummond, 347 Andrieux Street, Sonoma, CA 95476."*

2.2 **Items and Responsibilities of DOME.** In exchange for payment and the releases set forth herein below, DOME agrees to provide SVH and be responsible for the following:

a. One Year Warranty on all work performed by DOME, which will be documented and agreed to by the Parties.

b. DOME will release all as-built plans to SVH.

c. DOME will be responsible to resolve and pay any outstanding claims for payment to any subcontractor or design consultant on the Project and will defend, indemnify and hold SVH harmless from any and all claims made by any Project subcontractor or design consultant for payment.

d. SVH will be provided with unconditional lien waivers for Dome and all Dome's subcontractors and consultants.

e. The Design Professionals of Record ("DPOR") are to perform certain limited additional work, the terms and conditions of which are set forth and detailed in the attached Exhibit "A" and incorporated herein by this reference.

f. Regarding PMI:

1) Dome shall furnish unconditional waiver and release(s) for progress payments made to Peterson Mechanical, Inc. (PMI) through Dome's Payment Application #21 amounting to \$1,268,870.91.

2) Dome shall be responsible for paying any outstanding balance due to PMI up to \$1,268,870.91 in order to obtain the necessary unconditional waiver and release(s).

3) No additional payments shall be made by SVH to Dome until the unconditional waiver and release(s) amounting to \$1,268,870.91 for PMI are substantiated to SVH.

4) Dome shall reconcile its total subcontract(s) with PMI to \$1,268,870.91.

5) Dome shall relinquish any and all claims against PMI in excess of \$1,268,870.91.

6) Dome shall relinquish any retentions due to PMI.

- 7) SVH will negotiate a final settlement directly with PMI.
- 8) Negotiations of settlements between SVH and PMI shall exclude Dome.
- 9) SVH will settle all outstanding payments above \$1,268,870.91 for: change orders, compensation for work performed to date, and retention.
- 10) As part of the final settlement between SVH and PMI, PMI will release any and all claims against Dome in excess of \$1,268,870.91.
- 11) PMI shall satisfy the stop notice and claim filed by Hartmanaire on April 30, 2021 against the Project.
- 12) PMI shall furnish to SVH final unconditional waiver and release(s) for PMI, its vendors, and tier subcontractors in excess of \$1,268,870.91.

g. Regarding Blakeslee:

- 1) Dome shall furnish unconditional waiver and release(s) for Blakeslee Electric, Inc. (Blakeslee) progress billings dated June 30, 2020 and July 31, 2020, also known as Blakeslee progress billings #2 and #3, respectively.
- 2) Dome shall furnish unconditional waiver and release(s) for progress payments made to Blakeslee through Dome's Payment Application #21 amounting to \$533,321.95.
- 3) Dome shall be responsible for paying any outstanding balances due to Blakeslee up to \$533,321.95 in order to obtain the necessary unconditional waiver and release(s).
- 4) No additional payments shall be made by SVH to Dome until the unconditional waiver and release(s) amounting to \$533,321.95 for Blakeslee are substantiated to SVH.
- 5) Dome shall reconcile its total subcontract(s) with Blakeslee to \$533,321.95.
- 6) Dome shall relinquish any and all claims against Blakeslee in excess of \$533,321.95.
- 7) Dome shall relinquish any retentions due to Blakeslee.
- 8) SVH will negotiate a final settlement with Blakeslee
- 9) Negotiations of settlements between SVH and Blakeslee shall exclude Dome.

10) SVH will settle all outstanding payments above \$533,321.95 for: change orders, compensation for work performed to date, and retention.

11) As part of the final settlement between SVH and Blakeslee, Blakeslee will release any and all claims against Dome in excess of \$533,321.95.

12) Blakeslee shall furnish to SVH final unconditional waiver and release(s) for Blakeslee, its vendors, and tier subcontractors in excess of \$533,321.95.

3. **Full Settlement.** The Parties acknowledge the settlement payment specified under Section 2.1 of this Settlement Agreement shall constitute full and final settlement of all known and unknown claims the Parties have against one another, including but not limited to, compensation for all contract amounts and pending change orders, change order proposals, contract balance, claims, disputes, back charges, liquidated damages, and credits related to the Contract, the Resolved Matters and the Project.

4. **Release of Claims.** In consideration of and subject to the various promises and obligations of the Parties set forth in this Settlement Agreement, Except as set forth to the contrary in Section 2, above, the Parties agree to the following releases of claims:

3.1 Dome fully and forever releases, discharges, and dismisses all claims, demands actions, causes of action and rights, in law or in equity, in the nature of an administrative proceeding or otherwise (known, unknown, contingent, accrued, inchoate or otherwise), which Dome, or any of its agents, shareholders, representatives, employees, predecessors, insurers, sureties, successors and/or assigns has, has had or will have, now or in the future, against SVH, and all of its present and former officers, directors, employees, agents, attorneys, assigns and successors, arising out of and/or related in any way to the Contract, the Resolved Matters and the Project.

3.2 SVH fully and forever releases, discharges, and dismisses all claims, demands actions, causes of action and rights, in law or in equity, in the nature of an administrative proceeding or otherwise (known, unknown, contingent, accrued, inchoate or otherwise), which SVH or any of its officials, officers, agents, shareholders, representatives, employees, predecessors, successors and/or assigns has, has had or will have, now or in the future, against DOME, and all of its present and former officers, directors, employees, agents, attorneys, assigns and successors, arising out of and/or related in any way to the Resolved Matters.

3.3 Nothing in this Section 4 shall constitute a release of the obligations created by this Settlement Agreement, and this Section 4 shall not be construed to prevent any Party from seeking to enforce the terms and obligations created by this Settlement Agreement.

4. **Waiver of Rights.** Except as expressly reserved in this Settlement Agreement, each of the releases contained in this Settlement Agreement extends to all claims encompassed within each such respective release, whether such claims are known or unknown. Each of the Parties hereby acknowledges that they are familiar with California Civil Code §1542, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Each of the Parties hereby waives application of California Civil Code §1542 as to its respective release. In doing so, each of the Parties acknowledges that this means that if it should suffer any additional injuries, damages or losses out of the matters described in its respective release but of which it is not currently aware and which if known would materially affect its decision to execute its respective release, it would not be able to make any claim for those injuries, damages or losses, other than as expressly reserved herein.

5. **Representation and Warranties.**

5.1 Except as otherwise set forth in this Settlement Agreement, each of the Parties hereby represents and warrants that it has not previously assigned or transferred in any manner, or purported to have assigned or transferred in any manner, any of the claims described or set forth in Section 4 herein, entitled "Release of Claims" herein.

5.2 The Parties agree that specifically excluded from the releases and waiver of claims under Civil Code section 1542 as specified in this Settlement Agreement are any demands, claims and causes of actions arising from any applicable warranties, latent construction defects in the Project, or any third party action against SVH for personal injury arising out of construction of the Project or work thereon and that SVH shall not be precluded from bringing any action at law or in equity arising from or relating to such matters. The foregoing exclusion includes any latent defects or claims made pursuant to California Code of Civil Procedure section 337.15. At the time of executing this Settlement Agreement SVH is unaware of any claims that would be covered by insurance, any warranty claims or any claims for latent defects.

5.3 Except as otherwise set forth in this Settlement Agreement, the Parties hereby represent and warrant that the person executing this Settlement Agreement on its behalf is: (1) duly authorized to do so; and (2) authorized to bind the party to the terms set forth herein.

6. **Governing Law.** This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

7. **Venue and Jurisdiction.** The Parties agree that the Sonoma County Superior Court shall have jurisdiction to enforce any of the terms of this Settlement Agreement.

8. **Attorneys' Fees.** If any Party shall bring an action or proceeding against another Party to enforce any of the terms of this Settlement Agreement, the prevailing Party shall be entitled to an award of reasonable attorney's fees and costs. Otherwise, each of the Parties hereto shall bear their own expenses, attorneys' fees and costs, and any consultant or expert fees and costs, in connection with the Action and all of the claims that are settled and released pursuant to this Settlement Agreement.

9. **Representation by Counsel.** The Parties acknowledge that they have been represented by independent legal counsel of their own choice throughout all the negotiations, which preceded the execution of this Settlement Agreement, and that each has considered the advice of such independent legal counsel with respect to both the claims and disputes released herein and the legal effect of this Settlement Agreement.

10. **Modification.** This Settlement Agreement may be modified only by a contract in writing executed by the Parties to this Settlement Agreement against whom enforcement of such modification is sought.

11. **Prior Understandings.** Except as otherwise set forth herein, this Settlement Agreement contains the entire agreement between the Parties with respect to the subject matter of this Settlement Agreement, is intended as a final expression of such Parties' agreement with respect to such terms as are included in this Settlement Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Settlement Agreement.

12. **Successors-in-Interest and Assigns.** Except as otherwise set forth in this Settlement Agreement, the Parties hereto, and each of them, shall not assign or delegate to any other person this Settlement Agreement or any rights or obligations under this Settlement Agreement. Subject to any restriction on transferability contained in this Settlement Agreement, this Settlement Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest of the parties hereto, and each of them. Nothing in this Paragraph shall create any rights enforceable by any person other than the Parties hereto, except for the rights of the successor-in-interest of the Parties hereto, unless such rights are expressly granted in this Settlement Agreement to other specifically identified persons.

13. **No Third-Party Rights.** It is agreed that this Settlement Agreement is solely for the benefit of the Parties and shall not create any rights in any person not a party hereto, or in any way increase the rights of third persons or increase the obligations of any party hereto to any third person or increase the liability of SVH under any bonds.

15. **Drafting Ambiguities.** Each of the Parties to this Settlement Agreement and their respective legal counsel have reviewed and approved this Settlement Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement.

16. **Counterparts & Facsimile or Electronic Signatures.** This Settlement Agreement may be executed in whole or in counterparts together which shall make up the entire Settlement Agreement. Email, PDF, photocopy and facsimile signatures to this Settlement Agreement shall be accepted by the Parties the same as original wet signatures.

17. **No Reliance.** Each Party acknowledges: (i) this Settlement Agreement is the resolution of a fully matured set of facts and each Party individually declares and represents it is executing this Settlement Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Settlement Agreement; (ii) this Settlement Agreement is made without reliance upon any statement or representation not contained in this Settlement Agreement of any other Party, or any representative, agent or attorney of any other party; (iii) no promise, inducement or agreement not expressed in this Settlement Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Settlement Agreement are contractual and not mere recitals.

18. **Discovery.** Each Party acknowledges that it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the matters released herein,

and agree this Settlement Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

19. **Additional Documents.** The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Settlement Agreement.

20. **Voluntary.** This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or other entity.

21. **Waiver.** No provision of this Settlement Agreement may be waived unless in writing and signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

*\*\*\* Intentionally Left Blank. See Following Page \*\*\**



**SIGNATURE PAGE TO SETTLEMENT AGREEMENT AND RELEASE**

**PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS  
A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.**

The Parties have executed and delivered this Settlement Agreement consisting of eight (8) pages, inclusive of this signature page.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the dates set forth below:

Dated: December \_\_, 2021

Sonoma Valley Hospital Health Care District

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: December \_\_, 2021

Dome Construction Corporation

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

## **EXHIBIT A – SCOPE OF SERVICES TO TRANSITION DPOR**

**Scope of Work required to be undertaken by the outgoing Design Professionals of Record (DPOR) including Taylor Design, Simpson Gumpertz + Heger, Guttman & Blaevoet:**

**DPOR will complete the services set forth in this Transition Scope of Work in compliance with the requirements of the 2016 California Code of Regulations and OSHPD (HCAI) approved documents. DPOR will perform its work in compliance with its original contractual terms. DPOR's contractual warranty obligations will remain intact and enforceable for the work completed at the project and under this Transition Scope of Work. Acceptance of the work as completed will be documented within Verified Compliance Reports (VCRs) signed by the DPOR. The Work that is not complete at the time of this Agreement and not contained within this Transition Scope of Work shall be the sole responsibility of the replacement design team of record. Sonoma Valley Hospital ("SVH") shall, in accordance with the terms of the existing contract agreements, hold harmless outgoing DPOR from any and all issues and claims relating to work removed from the DPOR's scope of work and not performed by the DPOR and performed by others without DPOR's express consent.**

Note: VCR is a HCAI requirement from outgoing team to verify that the work they completed conforms with the approved construction documents.

1. CT Scope – HCAI Project Number H182094-49-00
  - a. All demolition and new work, except air balance and other items specifically noted below in Rooms 1248, 1249, 1299, 1301, 1301a, 1302, 1303, 1304, 1305, 1306, 1307, 1308 and 1309. Corridor C000/C001/C002 walls and flooring.
  - b. Condensing unit (CU/W-01) and Siemens Fluid Cooler and associated piping and electrical work.
  - c. Installation of the new roof top air handling unit (WAH07).
  - d. Roof patching work.
  - e. All tests and inspections listed under Phase 0, Phase 1A, Phase 1B and AHU/ROOF, except air balance and final fire alarm test for WAH07.
  - f. Structural repair of reinforcement bar in Room 1248.

2. MRI Scope – HCAI Project Number H193295-49-00
  - a. Temporary electrical work for spider box.
  - b. Demolition of casework, plumbing associated with casework demolition, and equipment in Rooms 1243, 1247, 1249, 1250, 1251, and 1253.
  - c. Demolition of scrub sink in Corridor C005 Alcove.
  - d. Safe-off of Plumbing and Electrical work.

**The following work is understood to be in progress and will be excluded from the list of completed items above. The items below will be completed by the supplanting design team and contractor.**

1. CT Scope – HCAI Project Number H182094-49-00
  - a. Design discussions:
    - i. DSI 29 – Electrical Coordination Study.
    - ii. TIO revision – Phase 1C
    - iii. Phase 2 ACD – Nurse Call (temp/permanent), Fire Alarm/Sprinkler, Security, Electrical (HDPE Panel), Corridor ceiling
    - iv. RFI 288 – Door clarifications
  - b. All outstanding OSHPD Field Staff Sign Offs/Inspections:
  - c. Installation of a section of low voltage cable ladder in the TDR Room along corridor wall (room 1308). Including but not limited to seismic bracing.
  - d. All work shown under Phase 2 on Sheet G-701 and associated phase 2 pages.
  - e. ADA Dressing Room - Door removal and install of curtain, at Room 1299.
  - f. Air balance and associated (including architectural, structural, MEP, low voltage, fire alarm, etc.) work required to achieve compliant air balance.
  - g. Electrical:
    - i. Phase 1 - All outstanding electrical scope related to CT power, security, punch list discussion regarding feature lighting, corridor light power source, nurse call, and user/owner training.
  - h. Roof:
    - i. All outstanding roof scope / conditions; including but not limited to penthouse wall patches, off haul of debris, demolition of temp ductwork, painting of exterior insulation, existing roof and roof hatch conditions.
  - i. BMS system set up and configuration.

- j. PMI Punchlist Items: Including but not limited to
  - i. All outstanding AHU related scope; including but not limited to controls, BMS configuration, inoperable outlets, outstanding AHU alarms, duct insulation, and SVH engineering open comments.
  - ii. All outstanding PMI punch list items; including but not limited to insulation, BMS scope, and Room 1249 Plumbing.
  - k. All ceiling and above ceiling scope related to the phase 1 areas. Including but not limited C000/C001/C002.
  - l. Any Owner requested changes to the approved drawings outside of the design/build contract.
  - m. Any owner requested changes that were included on the approved design documents but not funded by change order. Including but not limited to ACD 24 added scope within phase 1 and roof areas.
- 2. MRI Scope – HCAI Project Number H193295-49-00
  - a. All remaining demo and new work (architectural, structural, MEP, Low Voltage, fire alarm, fire protection, seismic bracing, etc.)
  - b. Any Owner requested changes to the approved drawings outside of the design/build contract.

**Documents to be signed by the responsible parties and the outgoing team include all documents required by 2016 California Code of Regulations and HCAI approved documents:**

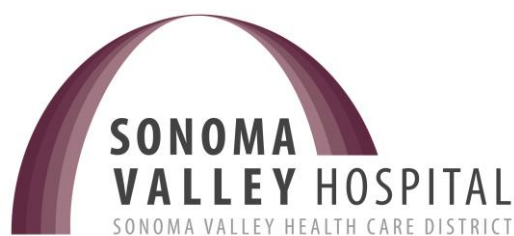
- a. CT Scope – HCAI Project Number H182094-49-00
  - i. VCRs for TIO milestones 1, 2, 3, 4, 6, 7 and 8 signed by Responsible Parties.
  - ii. VCRs for TIO milestone 5 and 9, excluding the air balance, signed by Responsible Parties.
  - iii. VCRs for permanent nurse call system for the work completed to date per HCAI PIN60 regardless of TIO milestone.
  - iv. FVCRs for Supplementation that describe the status of the project, including nurse call system and Phase 1A/1B progress, signed by Responsible Parties.
- b. MRI Scope – HCAI Project Number H193295-49-00
  - i. FVCRs for Supplantation that describe the status of the project, including temporary power provided, signed by Responsible Parties.

**Final Deliverables to Owner to be transmitted electronically and on a thumb drive to “Sonoma Valley Hospital, Attention: Kimberly Drummond, 347 Andrieux Street, Sonoma, CA 95476.”**

- i. Revit Models of CT and MRI projects
- ii. CAD format of the Revit models
- iii. CAD Electronic Files in PDF Format of all drawings prepared by the DPORs for CT and MRI including for radio frequency and magnetic shielding design, sketches, ASIs, and ACDs.
- iv. All as-built drawing for all trades that have completed work on the project
- v. Native file format copy of the latest TIO for CT and MRI projects
- vi. Release of instruments of service for use by supplanting design team for CT and MRI
- vii. All versions of structural calculations submitted to OSHPD (HCAI) for CT and MRI

**Participation in meetings with the supplanting designers, to include preparation and follow-up.**

- A Settlement Agreement between DOME and SVH shall be fully executed between all necessary parties prior to starting any of the transition services related to closeout and supplantation.
- Site Visits by outgoing DPORs and subconsultants to complete VCR and FVCRs shall be completed by 12/17/21, based on agreement executed no later than 12/3/2021. Any delay beyond will move all related timelines accordingly.
- All deliverables from outgoing DPOR and subconsultants shall be completed by 12/31/21.
- One (1) Virtual Meeting of sufficient length as deemed necessary by DPOR’s to complete supplantation documentation and transition from outgoing DPOR and subconsultants and incoming DPOR and subconsultants with all responsible parties in attendance shall be completed in-person or virtually by 12/17/21.
- There is a budget of \$30,000 to be paid by Dome to the DPOR at the rates set forth in their respective contracts to fulfill the obligations of this Transition Scope of Work, including but not limited to transmitting deliverables, preparing VCRs, conducting all necessary follow-up inspections associated with the VCRs as part of supplantation. The outgoing DPOR will maintain a time log for the work performed.
- If SVH, their representatives or their new design team requests additional time for the Transition Scope of Work, the DPOR shall be compensated by SVH through Dome at their current contractual rates for additional services.



*Healing Here at Home*

**To:** SVH Board of Directors  
**From:** John Hennelly, CEO  
**Date:** 12/02/2021  
**Subject:** Exception for Emergency Contract

**RECOMMENDATION TO THE BOARD OF DIRECTORS:**

Management is recommending to the Sonoma Valley Hospital Board of Directors that they authorize the completion of CT Project – Phase 1 of the Outpatient Diagnostic Center as an emergency contract per the exception clause in the Policy and Procedures Governing Bidding for Facility Projects.

As evidenced by the background iterated below, Management is asserting that this phase of the project is in a state of emergency and will not permit a delay resulting from a competitive solicitation of bid.

**BACKGROUND:**

The current Design Build Team (“DBT”) – Dome/Taylor has been suspended from the Outpatient Diagnostic Center project. SVH is in the process of terminating the DBT and procuring a negotiated settlement.

As outlined in the policy GOVERNING BIDDING FOR FACILITY PROJECTS Clause 4.4.1 - Exception For Emergency Contracts the following is support to allow the Board to evaluate that the completion of CT Phase 1 constitutes an emergency that will not permit a delay resulting from a competitive solicitation for bids, and that action is necessary to respond to the emergency.

*The current status of the construction for the CT Phase 1 is incomplete and posing a risk to the organization. The existing CT is at end of life and has maintenance issues that have rendered it inoperable during the repair. This phase of the project is 90% completed with outstanding issues surrounding the mechanical performance of the new air handler unit. The penthouse on the West Wing unit has been temporarily secured from the elements. It is imperative that the project move forward without delay that would occur with a public bid once the settlement with the DBT is complete.*





## **POLICY AND PROCEDURES GOVERNING BIDDING FOR FACILITY PROJECTS # P-2019.08.01**

### **1. PURPOSE**

1.1 The purpose of this policy is to clarify the public contracting processes for Facility Projects (as defined in Section 2) of the Sonoma Valley Health Care District (“District”) and to provide guidance regarding these processes to the District’s Board of Directors (“Board”), President and Chief Executive Officer (“CEO”), and employees. The Policy will take effect when the District Board notifies the State Controller of its intention to become subject to The Uniform Public Construction Cost Accounting Act.

1.2 The District’s public contracting areas for Facility Projects include purchasing, professional services, leasing and real estate and facilities construction. This Construction Bidding Policy (“Policy”) contains general bidding policy guidelines and specifically addresses projects relating to the construction or improvement of a hospital or health care facility. This Policy covers the contracting for professional services related to Facility Projects. It does not cover contracting for professional services that are not related. The Policy does not apply to contracts for the procurement of materials and supplies that are not related to Facility Projects. For these contracts the District’s Policy Governing Purchases of Materials, Supplies and Equipment and Procurement of Professional Services shall be used.

1.3 It is the intent of the Board, consistent with the District’s obligations, to obtain the best value for all expenditures, consistent with the responsibility to provide quality health care to its patients.

1.4 It is the intent of the Board to provide an equal opportunity to all qualified and responsible parties wishing to participate in the bidding process with respect to Facility Projects for the District and the Hospital.

1.5 It is the intent of the Board to clarify, with this policy, the Board’s legal authority granted to the President and Chief Operating Officer (“CEO”) by the Board with regard to Facility Projects for the District and Hospital. It is also the intent to clarify the legal authority retained by the Board.

1.6 Any contract awarded by the District shall be subject to all applicable provisions of federal, California and local laws, including without limitation, laws relating to the performance of work for a public agency. In the event of a conflict between any contract documents and any applicable law, the law shall prevail.

1.7 This policy does not address or govern contracting with providers or physicians.

## 2. DEFINITIONS

2.1 **“Facility”** means any plant, building, structure, ground facility, utility system, real property, streets and highways, or other public work improvement. (PCC § 22002 (e)).

2.2 **“Facility Project”** means work relating to projects involving construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving the hospital and any leased, or operated facility of the hospital. Excluded from this definition is routine, recurring, and usual work for the preservation or protection of the facility and minor repainting (“Facility Maintenance”). (PCC § 22002 (c)).

2.3 **“Responsible Bidder”** means a bidder who has demonstrated the attribute of trustworthiness and quality during prior service, a reputation for reliability and satisfactory service with other clients, sufficient financial capacity and the physical capability and the technical and non-technical expertise in order to perform the contract satisfactorily. (PCC § 1103).

## 3. ETHICS

3.1 **Conflict of Interest.** No Board member or employee of the District/Hospital may participate in any selection process when such person has a relationship with a person or business entity seeking a contract which would subject that person to the prohibitions in Government Code § 87100.

3.2 **No Kickbacks.** With respect to all contracts covered by this Policy, any practices or procedures which might result in unlawful activity are prohibited, including practices which might result in rebates, kickbacks or other unlawful consideration.

3.3 **No Advantage.** No illegal, unfair, unethical or otherwise improper advantage shall be accorded to any bidder by the District, a Board member or an employee of the District/Hospital.

## 4. CONTRACTING FOR FACILITIES PROJECTS

4.1 **Election To Become Subject To The Uniform Public Construction Cost Accounting Act.** The Board hereby elects under PCC § 22030 to become subject to the Uniform Public Construction Cost Accounting Act (the “Act”), codified at PCC §§ 22000 to 22050, and the uniform construction cost accounting procedures adopted by the California Uniform Construction Cost Accounting Commission established under the Act (the “Commission”), as they may each from time to time be amended, and directs that the CEO notify the State Controller forthwith of this election. The management of all District Facility Projects shall meet the requirements prescribed in those provisions, and shall be guided by the Commission’s Cost Accounting Policies and Procedures Manual (the “Manual”). By becoming subject to the Act and as set forth in this policy, the Board clarifies the Board’s legal authority granted by the Board to the CEO with regard to the contracting of Facility Projects for the District and Sonoma Valley Hospital (“Hospital”), and the legal authority retained by the Board.



4.2 **Delegation of Authority.** Except as specified in Section 6 of this policy and elsewhere in this policy where it is explicitly stated, the Board hereby delegates to the CEO the authority to act on behalf of the Board in the implementation of the provisions of this Policy. In all instances where the Board's legal authority is granted to the CEO, it is understood that the CEO may in turn delegate this authority to a member of the CEO's staff. Responsibility for adherence to this policy, when the authority is delegated by the CEO to a staff member, remains with the CEO. The CEO is responsible for developing written procedures to implement and manage this Board Policy.

4.2.1 **Purchasing.** The CEO is authorized by this Policy to make all purchases and to execute all purchase orders or contracts for the District and the Hospital duly authorized by the Board pursuant to this policy. All purchases and contracts shall be upon written order. (H&S § 32132(b); *id.* § 32121(c),

4.3 **Policy Revisions.** If the CEO determines that any portion of this Board Policy is in need of revision, or an exception is needed, the CEO shall bring the issue, in writing, with a recommendation for the change or exception along with the rationale, to the Board's Governance Committee for its review and then to the Board for its action.

4.4 **Exemptions to Bidding and Lowest Bid Acceptance.** The Board shall not be required to apply the lowest bid policy to:

- (i) Emergency contracts and emergency service contracts (PCC 22035)
- (ii) Change orders to existing contracts that are less than 5% of the original contract (H&S Code 32132)
- (iii) Professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms for work on Facility Projects (Government Code 4526, H&S Code 32132.b)
- (iv) Facility Projects where the District has elected to use a design-build method to select the contractor (PCC, 20133)
- (v) Purchasing of medical equipment or surgical equipment or supplies, or electronic data processing and telecommunications goods and services (H&S § 32132(b), (d).)
- (vi) Land and building leases and purchases

4.4.1 **Exception For Emergency Contracts and Emergency Service Contracts.** In cases of emergency when repair or replacements are necessary, the District may proceed at once to replace or repair any facility without adopting plans, specifications, strain sheets, or working details, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. (Public Contract Code ("PCC") § 22035; *id.* 22050(a)(1).) If notice for bids to let contracts will not be given, the District shall comply with the following procedures:

(a) **Finding Of Emergency.** Before emergency procedures may be used, the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency. (PCC § 22050(a)(2).)

(b) **Delegation To CEO.** The Board, by a four-fifths vote in approving this policy, shall delegate, to the CEO the authority to order emergency action. (PCC § 22050(b)(1).)

(c) **Reporting By CEO.** If the CEO orders any emergency action, the CEO shall report to the Board Chair within 24 hours of the action, and report to the Board at its next regularly scheduled meeting or at a special session of the Board within 14 days, the reasons justifying why the emergency did not permit a delay resulting from a competitive solicitation for bids and why the action was necessary to respond to the emergency. The CEO shall also report on the status of the emergency contracts at each following Board meeting until the action is terminated (contracts completed). (PCC § 22050 (c)(1))

4.4.2 **Exception For Change Orders.** The CEO shall not be required to secure bids for change orders that do not materially change the scope of work set forth in a contract previously made pursuant to this policy, provided: (H&S Code 32132 (c))

(a) The contract was made in compliance with bidding thresholds stated in Section 4.

(b) No individual change order amounts to more than five percent (5%) of the contract.

(c) The total project cost for a negotiated contract project would not exceed the dollar amount for negotiated contracts, \$60,000.

(d) The total project cost for a contract awarded by informal bidding procedures would not exceed the dollar amount of \$200,0000.

4.4.3 **Exception For Facility Project Professional Services.** Competitive bidding is not required for contracts for professional services. (H&S § 32132(b).)

(a) Where required by Facility Projects, the CEO shall award contracts for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the types of services to be performed and at fair and reasonable prices. (Government Code (“Govt”) § 4526; H&S § 32132(b))

(b) The CEO shall establish procedures for verifying competence and professional qualifications and for determining fair and reasonable benchmark prices for these services (Govt § 4526.).

(c) When bids are solicited for architectural, landscape architectural, engineering, environmental, land surveying or construction management firms, the Notice Inviting Bids for these services shall contain the following statement in boldface type: **“Please be advised that the successful design professional will be required to indemnify, defend and hold harmless the District against liability for claims that arise out of or relate to the negligence, recklessness or willful misconduct of the design professional.”** (Civil Code § 2782.8.)

4.4.4 **Exception For Design-Build Projects.** Notwithstanding anything to the contrary, the Board may elect to use the Design – Build method for bidding on Facility Projects if the project amount will be greater than \$1.0 million. The design-build procedure is described

in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code. (H&S § 32132.5)

(a) In estimating the cost of a Design – Build Facility Project, the costs for OSHPD and City of Sonoma Permits and the costs for design professionals shall be included. The overhead allocation required for uniform construction cost accounting procedures shall not be added to the cost of subcontractors and the cost for material purchases.

(b) If the Board elects to use the Design – Build method, the Board shall follow the contracting provisions of Public Contract Code § 20133 and shall award the contract based on “best value” as defined in section 20133. Because of their complexity, the Design – Build contracting provisions are not included in this policy.<sup>1</sup>

**4.4.5 Exception for Purchases of Medical and IT Equipment.** Competitive bidding is not required for purchases of medical or surgical equipment or supplies, or for electronic data processing and telecommunications goods and services. The phrase “medical or surgical equipment or supplies” includes only equipment or supplies commonly, necessarily, and directly used by, or under the direction of, a physician and surgeon in caring for or treating a patient in a hospital. (H&S § 32132(b), (d).)

**4.4.6 Exception For Leasing And Real Estate.** Contracts regarding land purchases and leases which bind the District to the terms of a contractual agreement shall be approved by the Board and shall be signed by the Chair of the Board unless the Board designates an alternate signer when the contract is approved.

**4.5 Project Specifications.** The CEO shall prepare bid packages for any Facility Project contract. The bid packages shall include specifications as follows:

**4.5.1 Project Description.** The CEO shall prepare plans, specifications or a description of general conditions (“Specifications”) for the project. The Specifications shall be in such detail and written with such specificity as may be required to allow all potential bidders to understand the project and give a level playing field to all bidders. (PCC § 22039, as amended 1/1/16 by Omnibus Bill SB 184)

**4.5.2 Bidder’s Security.** The specifications shall include the requirement for bidder’s security, performance bonds and payment bonds.

**4.5.3 Facility Contract Construction Subcontractors.** The CEO shall include in the Specifications a provision that any prime contractor shall include in his/her bid:

(a) The name and address of each subcontractor who will perform labor or render service or fabricate and install a portion of the Facility Project in excess of 5% of the total amount of the contract.

(b) A description of portion of the Facility Project to be performed by each subcontractor listed.

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<sup>1</sup> In 2009 the Board developed and adopted procedures and contract language, etc. for the use of the Design – Build method on the 2008 General Obligation Bond Project and these procedures and contract language are available for use again.

(c) The bidder shall list only one subcontractor for each portion of the Facility Project as is defined by the bidder in the bid. (PCC § 4104.)

(d) A prime contractor whose bid is accepted may not substitute a new subcontractor in place of the subcontractor listed in the original bid except as allowed under Public Contract Code 4107. Any work not listed for a specific subcontractor must be done by the prime contractor and shall not be substituted

**4.5.4 Completion Date.** The CEO shall include in the Specifications a time within which the whole or any specified portion of the Facility Project shall be completed. (Govt § 53069.85.)

(a) The CEO may include in the Specifications a provision that the contractor shall forfeit a specified sum of money for each day completion is delayed beyond the date stated in the Specifications.

(b) The Board may include in the Specifications a provision for the payment of a bonus to the contractor for completion of the project prior to the specified date stated in the Specifications when such timely completion would be beneficial to the District. (Govt § 53069.85.)

**4.6 Facility Project Cost Estimate.** A project cost estimate shall be prepared by the CEO for each Facility Project. The Cost Estimate, at a minimum, shall contain: (The Manual, Chapter 3)

(a) A description of the project with sufficient detail to allow reasonable accuracy of cost estimates.

(b) A description of the method used to estimate each cost segment.

(c) An estimate of all direct and indirect costs for the project.

(d) A calculated administrative overhead percentage (maximum 30%) shall be added to all estimates for sub-contractor costs and direct material purchases.

Prevailing wage rates shall be used in all estimates.

The estimate shall be used to determine the appropriate process for the selection of contractors or sub-contractors.

The estimate shall be prepared in sufficient specificity to enable comparisons to actual cost when the project is completed.

**4.6.1 Costs To Be Excluded From Estimate.** The following costs may be excluded from the cost estimate:

(a) OSHPD and City of Sonoma permits; (ii)

(b) Facility Project engineering, architectural and construction management services

(c) Medical equipment. Section 4.4.5 of this Policy covers the selection process for these services

**4.7 Submission of Bids.** With respect to all bids submitted for Facility Projects covered by this Policy:

4.7.1 All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: (PCC § 10167.)

(a) An electronic bidder's bond by an admitted surety insurer submitted using an electronic registry service approved by the department advertising the contract.

(b) A signed bidder's bond by an admitted surety insurer received by the department advertising the contract.

(c) Cash, a cashier's check, or certified check received by, and made payable to, the director of the department advertising the contract.

(d) The required bidder's security shall be in an amount equal to at least 10 percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it.

(e) All bids submitted pursuant to this section shall also comply with the provisions of Section 1601 of the Public Contract Code.

The CEO shall return to all unsuccessful bidders their respective bidder's security within five (5) working days after the contracts for the project have been awarded. :

**4.8 Categories Of Contracts By Dollar Thresholds.** For purposes of bidding procedures, Facility Projects are divided into three different categories by dollar thresholds, as follows:

**4.8.1 Under to \$60,000.** The CEO shall award contracts for District Facility Projects of sixty thousand dollars (\$60,000) or less by negotiated contract, or by purchase order. The CEO is not bound to accept the bid of the lowest responsible bidder (PCC § 22032(a), 22034 (e)).

**4.8.2 Between \$60,000 and \$200,000.** The CEO shall award contracts for District Facility Projects more than sixty thousand dollars (\$60,000) but less than two hundred thousand dollars (\$200,000) or less by informal procedures as set forth in this Policy. (PCC § 22032(b), 22034 (e))

**4.8.3 Over \$200,000.** The Board shall award contracts for District Facility Projects of more than two hundred thousand dollars (\$200,000), except as otherwise provided in this Policy, by formal bidding procedure as set forth in this policy. (PCC § 22032(c))

**4.8.4 Separation of Work Orders of Facility Projects.** Splitting or separating Facility Projects into smaller work orders or projects after competitive bidding for the purpose of evading the provisions of this policy is prohibited. (PCC § 22033)

**4.9 Procedures For Projects More than \$60,000 but less than \$200,000 – Informal Bidding Procedure.** Facility Projects of more than sixty thousand dollars (\$60,000) but less than two hundred thousand dollars (\$200,000), the District shall use informal bidding procedures, as follows:

**4.9.1 List of Trade Journals.** The CEO shall use the list of trade journals provided in the Cost Accounting Policies and Procedures Manual ("The Manual"), Chapter 1.05 for all mailings to trade journals required by this section.

**4.9.2 List of Registered Contractors.** The CEO shall develop an objective pre-qualification criteria and process for use in the formation and maintenance of the District's contractor's lists. (The Manual, Chapter 1.04)

(a) Annually, the CEO shall establish a new or update its existing list of registered contractors by mailing, faxing, or emailing a written notice to all construction trade journals designated in Section 4.9.1, inviting all licensed contractors to submit the name of their firm to the District for inclusion on the District's list of qualified bidders for the following calendar year.

(b) The notice shall require that the contractor provide the name and address, fax number, and email address to which a Notice to Contractors or Proposal should be mailed, faxed, or emailed, a phone number at which the contractor may be reached, the type of work in which the contractor is interested and currently licensed to do (earthwork, pipelines, electrical, painting, general building, etc.) together with the class of contractor's license(s) held and contractor license numbers(s).

(c) The CEO may include any contractor names it desires on the list, but the list must include, at a minimum, all contractors who meet the objective pre-qualification criteria and who have properly provided the District with the information required under (b) above, either during the calendar year in which the list is valid or during November or December of the previous year.

(d) A contractor who supplies the required information and meets the objective pre-qualification criteria may have their firm added to the District's contractors list at any time during the year.

(e) The CEO shall maintain the list of qualified contractors, identified according to categories of work

**4.9.3 Mailing of Notices Inviting Informal Bids.** The CEO shall provide notice to contractors inviting informal bids. (PCC § 22034).

(a) The CEO shall mail, fax, or email the notice inviting informal bids to all contractors on the list for the category of work being bid unless the product or service is proprietary. (PCC § 22034(b))

(b) The CEO may mail, fax, or email a notice inviting informal bids to all trade journals listed in Section 4.9.1 unless the product or service is proprietary. (PCC § 22034 (b))

(c) The mailing, faxing, or emailing of notices to contractors and construction trade journals pursuant to subdivisions (a) and (b) shall be completed not less than 10 calendar days before bids are due. (PCC § 22034 (c))

(d) The notice inviting informal bids shall describe the project in general terms, state how more detailed information about the project may be obtained, state the time and place for the submission of bids and the time and place for opening the bids. (PCC § 22034(d))

**4.9.4 Award of Bids, Delegation to CEO.** The Board delegates the authority to award informal contracts to the CEO and the CEO shall award the contracts for each type of

work for Informally Bid Facility Projects (\$60,000 to \$200,000) to the lowest responsible bidder who shall give the security the District requires. (PCC § 22032; PCC § 22020)

**4.9.5 Minimum Number of Informal Bids.** The CEO shall consider a minimum of three (3) informal bids whenever possible; however, where the CEO cannot obtain three informal bids or when the CEO decides that time will not permit obtaining three informal bids, the CEO may consider a minimum of two (2) informal bids. All bids shall be in writing, sealed, and subject to the following general conditions.

**4.9.6 Multiple Informal Bids.** When informal bids for multiple items are solicited at the same time, the CEO may accept parts of one or more bids (provided the Notice Inviting Bids so indicates) unless the bidder has specified to the contrary, in which event the District reserves the right to disregard the bid in its entirety.

**4.9.7 Total Project Cost in Excess of \$200,000.** If the project cost for all bids received is in excess of \$200,000, the Board may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the District was reasonable. (PCC § 22034(f))

If the total Project Cost is greater than \$212,500 the Board shall reject all bids and may direct the CEO to rebid the project.

**4.9.8 Minor Deviations.** The CEO reserves the right to waive inconsequential deviations from the specifications in the substance or form of informal bids received.

**4.10 Procedures For Projects Over \$200,000 – Formal Bidding Procedure.** District Facility Projects of more than two hundred thousand dollars (\$200,000) shall, except as otherwise provided in this Policy, be let to contract by formal bidding procedure as follows.

**4.10.1 Plans and Specifications.** When the CEO determines that the estimated cost for a Facility Project is more than \$200,000, the CEO shall prepare plans, specifications or a description of general conditions (“Specifications”) for the project. The Specifications shall be in such detail and written with such specificity as may be required to allow all potential bidders to understand the project and give a level playing field to all bidders. (PCC § 22039, as amended 1/1/16 by Omnibus Bill SB 184)

The specifications shall include the requirement for bidder’s security, performance bonds and payment bonds. The specifications shall also include the time within which the whole or any specified portion of the Facility Project shall be completed. (Govt § 53069.85.)

**4.10.2 Requirements of Notice Inviting Formal Bids.** The notice inviting formal bids shall at a minimum include all of the following in the notice inviting formal bids (PCC § 22037):

- (a) Description of the contemplated Facility Project.
- (b) The procedure by which potential bidders may obtain electronic copies of the Plans and Specifications (or printed copies if not available electronically)
- (c) The final time, date and address (or e-mail address) for receiving and opening of bids (including designation of the appropriate District person or office) (Govt § 53068; PCC § 4104.5; *id.* § 22037)

(d) The date, time and place, and the name and address of the person responsible for receiving bids;

(e) The payment and performance bond amounts required by the Specifications (Civil Code § 9550)

(f) The time within which the whole or any specified portion of the Facility Project shall be completed (Govt § 53069.85)

(g) The penalty amount, if required by the Specifications, for each day completion is delayed beyond the specified time. (Govt 53069.85)

(h) The Board approved bonus amount payable to the contractor for completion of the work prior to the specified completion day, if a bonus payment is included in the Specifications. (Govt § 53069.85)

**4.10.3 Publication Of Notice Inviting Formal Bids.** The notice shall be published at least 14 calendar days before the date of opening the bids in The Sonoma Index Tribune. The notice inviting formal bids shall also be mailed, faxed or emailed to trade journals listed in the Cost Accounting Policies and Procedures Manual (“The Manual”), Chapter 1.05. The notice shall be mailed, faxed or emailed at least 15 calendar days before the date of opening the bids. In addition to notice required by this section, the CEO may give such other notice as she/he deems proper. (PCC § 22037)

**4.10.4 Prequalification.** The CEO shall prepare a uniform prequalification system using a standard questionnaire to evaluate the ability, competency and integrity of bidders as outlined in the Local Agency Public Construction Act, PCC § 20101 *et seq.* and it shall be used for all projects estimated to cost over \$500,000. In such event, the CEO shall require each prospective bidder to complete and submit a standardized questionnaire and financial statement. The standardized questionnaires and financial statements received from interested contractors are not public documents and shall not be made public. The CEO may use the prequalification procedure for any Facility Project that requires formal bidding.

**4.10.5 Submission of Formal Bids.** The Board shall accept only written sealed bids from the prospective bidders. Upon receipt, the bid shall be stamped with the date and time the bid was received. All bids shall remain sealed until the date and time set forth for opening the bids in the Notice Inviting Bids. Any bid received by the District/Hospital after the time specified in the Notice Inviting Bids shall be returned unopened. (Govt § 53068). The CEO may elect to receive bids and supporting materials electronically using procedures in compliance with PCC § 1601.

**4.10.6 Examination and Evaluation of Formal Bids.** On the date provided in the Notice Inviting Bids, a person designated by the CEO shall attend and officiate over the opening of bids (“Opening”). The bids shall be made public for bidders and members of the public who may be present at the Opening. The District reserves the right not to determine the low bidder at the Opening, to obtain the opinion of counsel on the legality and sufficiency of all bids, and to determine at a later date which bid to accept. Such determination shall be made within sixty (60) calendar days of the Opening or unless a different period of time is specified in the Notice Inviting Bids.



4.10.7 **Award of Contract.** The Board shall award the contract to the lowest Responsible Bidder, as defined in Section 2.3, provided the bid is reasonable and meets the requirements and criteria set forth in the notice inviting bids. (PCC § 22038(b))

(a) If two or more bids are the same and the lowest, the Board may accept the one it chooses. (PCC § 22038(b))

(b) If the Board determines that the lowest bidder is not responsible, the Board may award the contract to the next lowest responsible bidder.

(c) If the CEO anticipates that the Board may decide to award the contract to a bidder other than the lowest bidder pursuant to subparagraph (b), the CEO shall, with the assistance of District Counsel, first notify the low bidder of any evidence, either obtained from third parties or concluded as a result of the District's investigation, which reflects on such bidder's responsibility. The CEO shall afford the low bidder an opportunity to rebut such adverse evidence and shall permit such bidder to present evidence that it is qualified. The opportunity to rebut adverse evidence and to present evidence of qualification may be submitted in writing or at an informal hearing of the Board, individual and/or committee as determined by the Board.

4.10.8 **Minor Deviations.** The Board reserves the right to waive inconsequential deviations from the specifications in the substance or form of formal bids received.

4.10.9 **Rejection Of Bids.** Notwithstanding anything to the contrary, the Board is under no obligation to accept the lowest responsible bidder and reserves the right to reject all bids. (PCC § 22038(a); H&S Code § 32132. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the Board shall abandon the project or re-advertise for bids in the manner described in this policy.

4.10.10 **If No Bids Received.** If no bids are received through the formal or informal procedure, the project may be performed by negotiated contract without further complying with this article. PCC § 22038 (c))

## 5. BOND REQUIREMENTS

5.1 **Performance Bond.** For any contract in excess of \$25,000, the successful bidder shall furnish a performance bond in the amount of one hundred percent (100%) of the contract sum at the time of entering into the contract. The performance bond shall be filed with the CEO to insure the District against faulty, improper or incomplete materials or workmanship, and to insure the District of complete and proper performance of the contract.

5.2 **Payment Bond.** For any contract in excess of \$25,000, the successful bidder to whom a contract is awarded shall furnish a payment bond acceptable to the District. (Civil Code § 9550). This labor and material bond shall be filed with the CEO pursuant to applicable laws of the State of California.

5.3 **Professional Services.** The CEO shall not require a payment bond for architectural, landscape architectural, engineering, land surveying or construction management services.

**6. LIMITS OF AUTHORITY DELEGATED TO THE CEO, CAPITAL PROJECT CONTRACTS**

Facility Project contracts for capital projects that will financially obligate the District to more than \$100,000 shall be reviewed by the Finance Committee.

Facility Project contracts for capital projects that are included in the capital budget and will obligate the District to more than \$200,000 shall be approved by the Board.

Facility Project contracts for capital projects that are not included in the capital budget and will obligate the District to more than \$100,000 shall be approved by the Board.

Facility Project change orders that in aggregate increase the scope of the Facility Project by more than 20% shall be approved by the Board.