

Hello Neighbor,

This email addresses the second portion of the Rules and Regulations document. This part covers the rules that the district must follow when spending money. The two parts of the Rules and Regulations document can be found here:

<http://www.waterforpinestrawberry.com/data%20pages/BudgetDocs.htm> .

Also included is a discussion of how the purchase of the assets of Shaffer Water Management violates the procurement rules.

The operation of the PSWID district is governed by a Rules and Regulations document that the board put together and voted to authorize. This document governs rules that customers must follow and rules that the board must follow in its activities. They were approved in April 2010.

**Next regular PSWID Meeting: Thursday March 17, 2011 at 7:30 PM at the PSWID Office**

1. Fraud and Collusion
  - a. “AXI, Section 6.1. No District employee, elected or appointed official shall assist a supplier of goods or services in securing a contract or purchase order by prejudicing the selection of that supplier or the price paid for goods or services sold to the District.”
  - b. Comment: Is lying repeatedly to the public about the contents of the Strawberry Hollow well appraisal, so that the board could claim it should be ignored, an act of “prejudicing the price paid”? Is starting an appraisal of the Milk Ranch well and then stopping it when it became clear that it wouldn’t have supported the price that the seller told the board to pay an act of “prejudicing the price paid”?
  - c. Comment: Is forcing out the prior district engineer, hydrologist, manager, and board chairman because the cost of filtering the dirty water from the Milk Ranch well was seen as imperiling the purchase an act of “prejudicing the price paid”?
2. Avoidance of Procurement Rules is Prohibited
  - a. “AXI, Section 12.2. The cost of an item as set forth in Sections 15, 16, and 17, not the method of payment, determines the means of procurement. Artificial division, splitting or fragmentations of a transaction to circumvent source selection or to avoid requirements for bidding or authorization of procurements are prohibited.”
  - b. This is discussed in the Shaffer Water Management purchase section below.
3. Expenditures of \$10,000 or less
  - a. “AXI, Section 15.1. Any procurement that results in an expenditure of \$10,000.00 or less shall have been made with as much economy as practicable in the open market place at the prevailing price without the requirement of public notice or Board authorization.”
  - b. “AXI, Section 15.2. Open market procurements shall, whenever practicable, be based on the lowest price of an item which meets or exceeds the performance or functional characteristics that are available from two or more sources of supply, if available, by written quote or in any acceptable informal manner.”

- c. “AXI, Section 15.3. The District Manager is authorized to compare prices offered by suppliers of goods and services within the open market and have final determination of the prevailing price to be paid by the District.”
  - d. “AXI, Section 15.4. Petty cash expenditures of \$100.00 or less may be authorized by the District Manager and disbursed by a designee from a cash fund set aside and maintained for small procurements. Use of petty cash shall not be used to circumvent the above policies.”
  - e. “AXI, Section 15.5. District Managers may be delegated the authority to approve minor expenditures for goods or services from budgeted departmental funds in a limited amount determined by a written policy of the District Board. Purchase orders, Blanket orders or Procurement cards for District Manager authorization shall be issued by the District Manager and shall state the expenditure amount limitation.”
  - f. It isn’t stated clearly, but it seems to imply that the District manager can authorize expenditures of \$10,000 or less. When this document was written the idea was that the District Manager would be an employee of the district. However, since the District Manager is now an employee of CH2M Hill, it would be prudent to revisit the amount that he can authorize, outside of what is covered by the CH2M Hill operations contract, and to put in place some sort of feedback to the board with regard to those authorizations.
4. Expenditures of \$10,001 to \$25,000
- a. “AXI, Section 16.1. Any procurement resulting in expenditure from \$10,001.00 to \$25,000.00 shall have been made only after informal competitive solicitation from two or more responsible suppliers if available, without the requirements of public notification by advertisement.”
  - b. “AXI, Section 16.2. The District Manager or designee shall obtain, when possible, two or more informal competitive bids, in writing, from suppliers on the current prospective supplier list of the District or the State and/or from other available suppliers.”
  - c. “AXI, Section 16.3. Informal quotations from suppliers responding to a request for bid other than in writing are satisfactory when the method of inquiry, date and person "quoted is documented; however, a written informal bid is strongly encouraged.”
  - d. “AXI, Section 16.4. Invitations to informal bids or quotations shall include a description of goods or services and all contractual terms and conditions applicable to the procurement.”
  - e. “AXI, Section 16.5. The District Chairman as chief administrative officer is authorized to execute contracts providing for an expenditure of less than twenty-five thousand dollars (\$25,000.00) unless otherwise provided by resolution or direction of the Board.”
  - f. Comment: Allowing the chairman to execute contracts up to \$25,000 without any oversight by the rest of the board is a situation that provides the potential for a great deal of abuse. As shown later in the email, Mr. Lovetro has a poor grasp of the procurement rules and, as evidenced by the rate increase debacle that he orchestrated, poor judgment. The board has authority as a group. A group is elected to provide a variety of viewpoints and to provide for checks and balances

on the actions of any one member. The district chairman is not the chief administrative officer of the district, he is the facilitator of the boards activities. Providing the district chairman with this amount of unchecked authority, whether it is Mr. Lovetro or some future chairman, is a huge mistake.

5. Expenditures above \$25,000

- a. "AXI, Section 17.1. Unless otherwise provided for or exempt by Arizona Revised Statutes any procurement resulting in an expenditure of more than twenty \$25,000.00 shall have been made only after formal competitive sealed bidding, solicited by public notification, properly received and authorized by the District Board.
  - i. 1. Contracts for projects defined as a "public work" with an estimated value of less than \$100,000 may be let by following the "informal" bidding procedures.
  - ii. 2. Projects defined as a "public work" where the estimated cost exceeds \$100,000 shall be let following the "formal" bidding procedures outlined below."
- b. "AXI, Section 17.2. When a formal invitation to bid is issued by the District Manager, it shall include the dates of public notice, the time and place for bid receipt and opening as well as a description of the goods or services."
- c. "AXI, Section 17.3. Public notification shall be considered adequate when a formal invitation to bid is advertised and published at least two consecutive publications in a newspaper of general circulation within the county, if a weekly paper, and no less than six nor more than ten days apart in a daily paper."
- d. "AXI, Section 17.4. The District Manager shall solicit formal sealed bids from two or more suppliers on the current prospective supplier list or other sources that have requested to be included in bids for goods or services of a specific character and kind."

6. Shaffer Water Management Asset Purchase

- a. The purchase of the Shaffer Water Management assets consisted of one bill of sale totaling \$50,000 which was divided into the following four items:
  - i. 1989 Geo Tracker: \$1,040
  - ii. 2005 Chevy Silverado K1500: \$11,505
  - iii. 2005 Dodge Dakota SLT: \$9,000
  - iv. Set of Tools: \$28,455
- b. When asked at the December 2010 board meeting about the purchase, the following exchange occurred:
  - i. Mr. Lovetro: "Sam you have a blue card here on item 5 which is the Financial Report."
  - ii. Sam Schwalm: "I had two questions. One is the board recently spent \$50,000 to purchase assets from Shaffer Water Management. I was wondering two things, one was why there was no public discussion or vote on the purchase? When you guys bought the backhoe there was a whole RFQ process, it was published in the paper and that came to \$45,000. So I am wondering why you didn't have to go through that process? Then the other thing I was wondering is how the tools were valued, because just

looking at that list I don't think it comes anywhere near the \$28,000 for the tools?"

- iii. Mr. Lovetro: "Sam those aren't really covered in the financial report and .... (few words cannot be heard)
- iv. Sam Schwalm: "It is a financial purchase that the board made."
- v. Mr. Lovetro: "Well I'll give you a quick answer. Number one that was in the budget for 2011, and it was approved and it was a budget item. So when it is a budget item, the procurement guidelines of the district were followed and it was one of those purchases we made. When we did buy the backhoe that was a new item, and it wasn't covered, so we had to put it out under the procurement guidelines. It was over \$25,000 and it required a bidding process. **Because the \$50,000 was not one item over 25 it was broken up into several items. It all fell within the procurement guidelines, and we were able to make the purchase because it was an approved budget item, and we had voted on it.** There was a budget hearing everything was there, and it was in the budget and it can be purchased as long as the procurement guidelines are followed. So we are not going to discuss this item any further as it is really out of the line of the agenda, it's not the budget or the review of the financials."

- c. Based on Mr. Lovetro's own words, the board violated AXI Section 12.2 which prohibits dividing up a purchase to avoid the procurement rules and AXI Section 17.1 which requires board approval for an expenditure above \$25,000. Why Mr. Lovetro thinks that \$28,455 is not over \$25,000 isn't clear. Mr. Lovetro also refers to the Rules and Regulations document as "procurement guidelines". The terms "is prohibited" and "shall have" are not indications that they are optional rules to be followed at the whim of the board. The fact that there was a line item in the budget for this purchase does not mean that the rules don't have to be followed. There is a difference between a budget item, which may or may not end up costing what is listed in the budget, and an actual expenditure.
7. Cost-Plus Contracts Prohibited
- a. "AXI, Section 24.1. Any type of contract which will promote the best interest of the District may be used, except that a cost-plus-a-percentage-of-cost is prohibited."
  - b. The CH2M Hill operations contract has several clauses that are written as the prohibited cost-plus-a-percentage-of-cost. For example:
    - i. "B.9.1.1 Any change in Project operations, personnel qualifications, required certification, staffing or other cost which is a result of Unforeseen Circumstance. Such Changes in Scope will be invoiced to Owner in an amount equal to CH2M HILL's Cost plus twenty percent (20%) and shall be due and payable by Owner commencing the month following the Change in Scope occurs."
8. Evaluation of Multi-Term Contracts
- a. "AXI, Section 24.5. Multi-term contracts may be used for any period of time deemed to be in the best interests of the District. The term of the contract and any conditions for the renewal or extension shall be included in the solicitation and funds shall be available for the first fiscal year at the outset of the contract.

Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriations of funds therefore.

- i. 1. Before exercising any option for renewal or extension of a contract, the District Manager or designee shall evaluate the performance criteria during the original contract period and determine in writing that competitive procurement is not more advantageous to the District than exercise of the particular option.
  - ii. 2. In the event that funds are not appropriated or made available to support the continuation of a contract in a subsequent fiscal year, the contract shall be canceled and the District shall have no further obligation under said contract.”
- b. The CH2M Hill operations contract is a multi-term contract. The Rules and Regulations document was written when the idea was that the District manager would be an employee of the district. Now that the District Manager is an employee of CH2M Hill it is a conflict of interest for the District Manager to do the evaluation of the CH2M Hill contract. This section needs to be rewritten so that the board does the evaluation of multi-term contracts.

This email is from the group Water For Pine Strawberry. We will be sending out an email after each of the PSWID meetings with a summary of what the board did, additional facts that are relevant to what went on, and some commentary. Please forward this email to friends and neighbors that are interested in the local water issues. If you would like to be added to or removed from the list for these emails, please reply to [WaterForPineStrawberry@hotmail.com](mailto:WaterForPineStrawberry@hotmail.com). Emails on earlier meetings are available on our website: [www.WaterForPineStrawberry.com](http://www.WaterForPineStrawberry.com) .

Water For Pine Strawberry is a group of residents who are concerned about the community's water issues and how they can best be resolved. Visit our web site, [www.WaterForPineStrawberry.com](http://www.WaterForPineStrawberry.com), for more information. The website for PSWID is [www.pswid.org](http://www.pswid.org) .

Clarifications can be submitted by anyone who is explicitly named, implicitly identifiable, or a board member to items in this email. Clarifications will be posted on our website. We reserve the right to post a response. Clarifications must deal with the topics discussed in the email that relate to the individual or the board. They must be in family friendly language and be non-abusive. When the clarification is accepted, it will be posted to the website and notice of that posting will be added to the next email.