

Burney Water District

Burney Water District (“District”) is not a county or town. It is unincorporated and a Census Designated Place (CDP). The District falls within Shasta County, which has a water agency, the Shasta County Water Agency.

Water Code:

The District does not have any documentation to showing that it was formed as a County Water District under the Water Code. According to Mr. Rodriguez, the District was formed under the California Water Code, Division 12, on November 27, 1944. Division 12 of the California Water Code refers to County Water Districts. In 1982 there was a resolution by the Board to change the name of the District from Burney County Water District to Burney Water District. It has been recommended to Mr. Rodriguez that he contact Shasta County Recorder’s Office to establish if they have any documentation on file. An online search showed that the Recorder’s Office had over 200 documents, but the documents have not been scanned and so are not available for our office to view. Mr. Rodriguez visited the Recorder’s Office on February 27, 2015. Update on search for formation documents:

1. Mr. Rodriguez went to Shasta County Recorder’s Office but did not find any documents dating back to 1944. Mr. Rodriguez went to the County Treasurer to see if they have anything. They did not but referred him to the Board of Supervisors. There he found a document that refers to an election that was to be held on November, 7 1944 to “organize the Burney County Water District.”
2. Called the State Archives and because the election was local, they do not have any records of the results.
3. I have been in contact with Allison at the Shasta County Elections office to see if they have a record of the results of the November 7, 1944 elections, but they did not find anything. Allison is speaking with her boss to see if they have any idea of where to look.
4. Called the Redding newspaper to see if they had any newspapers dating back to 1944 in their archives to see if we could find a report on the outcome of the elections. They referred me to the Shasta County Library.
5. Call Shasta County Library main branch in Redding and spoke with Gabe Burke at the Reference Desk. Their microfish machine is broken and it is taking 4-6 weeks to get a replacement. Mr. Burke offered to take the microfish to another library in the county that had a machine, but the machine cannot make copies. Waiting to hear back from him about what he found. Mr. Rodriguez contacted his local library to see if they had a machine so that he could look, but they do not.
6. Called the Secretary of State office to see if they had a register of public entities, as Burney Water District is receiving public funds, and they referred me to the State Archives. Section 40659 of the Water Code required all water districts to file a certificate with the Secretary of State in 1964 and the documents are in the State Archives.
7. Called State Archives, they did a search and found documents dating back to 1944 for Burney Water District. Have paid for all the documents that they have concerning Burney Water District to be copied and mailed to our office. Susan needs to get the invoice as we paid for the copies with Gary’s credit card.

But – Section 20200 (Chapter 2 - compensation of water district directors) – “as used in this chapter, “water district” means any district or other political subdivision, other than a city or county, a primary

function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. “Water districts” include, but are not limited to, ... county water districts ...”

Public Contract Code:

The challenge continues with the Public Contract Code. Division 2, Part 3, Chapter 1.5, Articles 61 – 129 provides competitive bidding law for specifically named water-related agencies. Shasta County Water Agency is name, but there is not reference to Burney Water District/Burney County Water District. This means that the District falls between the gaps and the District is not subject to competitive bidding law.

However, the legislative intent with the Public Contract Code (section 100) is to:

1. “Ensure full compliance with competitive bidding statutes as a means of protecting the public from issues of public funds;
2. Provide all qualified bidder with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and
3. Eliminate favoritism, fraud, and corruption the awarding of public contracts.”

And (section 102) “to encourage competition for public contracts and to aid public officials in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California’s public contract law should be uniform.

Other provision of the Public Contract Code that apply as they apply to all public entities:

1. Division 2 – General Provisions,
 - Part 1 – Administrative Provisions
2. Division 2 – General Provisions,
 - a. Part 3 – Contracting by Local Agencies (County Water District is a local agency) –
 - i. Chapter 1 – Local Agency Public Construction Act, articles 1 – 1.8, for specific agencies, but no reference to County Water Districts.
 - ii. Chapter 1.5 – Water District Acts – articles 61 – 129 provide competitive bidding law for specifically named water-related agencies. Shasta County Water Agency is named, but not Burney Water District.

Case Law:

Associate Builders and Contractors v. Contra Costa Water District (1995) 37 Cal. App. 4th 466 [**Note to self** – Contra Coast Water District is not named in the Public Contract Code – reference is made to Contra Costa County Flood Control and Water Conservation District and Contra Costa County Storm Drainage District. But, in the Water Code, the Contra Costa Water District is referred to in section 30507.1 – compensation of directors and section 31482 – revenue bonds]

Facts of the case – the District was constructing a large water system reservoir and pipeline project of a cost of \$450 million. District formally solicited bids with bidding procedures, including a project labor agreement (PLA) clause – prevented firms that would not agree to hire union labor from bidding on the project. Non-union bidders would be required to discharge their current non-union workers and hire union replacements.

“The Public Contract Code is replete with requirements that public agencies comply with the open bidding procedure for contracts above a state minimum amount and accept the bid from the lowest bidder.” *Contra Costa has a section in the Water Code that gives the District the authority to finance its projects by bonds issued pursuant to the Revenue Bond Law of 1941.* “Some anomaly may exist in the award of a public project worth many millions in taxpayer funds to other than the lowest bidder. However, county water districts, such as the District here, are not made subject to any explicit statutory low bidding requirements otherwise applicable to some other public agencies, or to such requirements applicable to water storage districts. In sum, the Legislature has not enacted an explicit requirement that public funds raised through the sale of revenue bonds by authority for the Revenue Bond Law of 1941, and entrusted to county water districts, are subject to a lowest bidder requirement in the circumstances of this case. Unless that legislative action is taken, we are precluded from imposing such a requirement in this case in light of our Supreme Court’s observation that minimum bidding laws must be strictly construed, and may not be extended beyond the specific provisions enacted by the Legislature.”

Footnote 3 – “While we note that the District itself sought bids and represented it would accept the lowest bidder, we are not cited to any statutory requirement that it do so.”

Conclusion:

Is no statutory authority applying the competitive bid statutes to a County Water District. Assuming the District is a water district, and as the District has no policies regarding competitive bidding, the District need not conduct competitive bidding and award the contract to the lowest bidder.

If not a water district, and if they do not have policies concerning competitive bidding, recommend that we draft a resolution for the Board to adopt policies based on the general principles of the legislative intent of the Public Contract Code. Also include Division 2 (General principles), Part 1 (Administrative Provisions):

1. Policies of regarding minority business enterprises, women business enterprises, and veteran/disabled veteran? (Section 2000 fwd. Public Contract Code – responsive bidders);
2. Project Labor Agreements (Chapter 2.8);
3. Preference for Materials (Chapter 3, article 5);
4. Subletting and Subcontracting (Chapter 4);
5. Relief of Bidders (Chapter 5);
6. Awarding of Contracts (Chapter 6);
7. Contract Clauses (Chapter 7); and
8. Claims and Disputes (Chapter 9)

Division 2 (General Provisions), Part 3 (Contracting by Local Agencies):

1. Public entity subject to this part (?) may require that each prospective bidder for a contract complete and submit a standardized questionnaire and financial statements, and experience in performing public works (Chapter 1, Article 1); and
2. Other articles 1.3 – 1.8 (awarding of contracts, resolution of construction claims; modifications, performance, payment; and damages related to competitive bidding).

Funds District will be using Public Funds for improvements:

1. Booster upgrade – loan from USDA (may have its own requirements, e.g. minority?), and
2. Water pipeline – reserve funds that are being moved to general funds.

Questions/guidance:

1. *When and if the District was required to pay prevailing wage?* “Except for public works projects of \$1,000 or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter shall be paid to all works employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.” (section 1770 of the Labor Code) With minor exceptions, all workers employed on public works projects must be paid the prevailing wage determined by the Director of the Department of Industrial Relations according to the type of work and location. The prevailing wage rates are usually based on rates specified in collective bargaining agreements. (California Department of Industrial Relations - www.dir.ca.gov/public-works/publicworkds.html)
2. *What, if any, are the project cost thresholds or other criteria (repairs/maintenance versus improvements, etc.) for doing a project in-house (with district staff and resources) versus having to contract out the work?* Answer will depend on whether Public Contract Code applies to them.
3. *Is the opinion from Wells, Small, Flehearty and Weil still valid?* Maybe ...
4. *What is the definition of Public Works projects?* A public works contract is “an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.” (Section 1100 of Public Works Code) Public Works refers to “construction, alteration, demolition, installation, or repair work (including maintenance) done under contract and paid by public funds. Public works projects do not include those done by a public agency with its own employees.” (California Department of Industrial Relations - www.dir.ca.gov/public-works/publicworkds.html) and (section 1720 (1) of the Labor Code).

Deadline:

Has a meeting with the Board on March 19, 2015, but will be discussing this issue primarily with the Finance Committee, which will be after March 19, 2015. This was the original deadline, but since there have been issues with determining formation the client wants us to work on that first. Once the State Archive documents arrive from Sacramento, we can take the next steps. The documents should be arriving this week, the week of March 23.