



**Responsible:** Office of Operations, Facilities Management Department

**BOARD POLICY 7420**  
**PERFORMANCE-BASED CONTRACTING**

**PURPOSE**

The Board of Trustees (“Board”) understands the importance of seeking alternative methods for financing certain capital and facilities management projects. This policy shall set forth the process for evaluating whether work to be performed on a building will be performed pursuant to a performance-based contract.

**POLICY**

1. Guiding Principles
  - a. Performance-based contracting is a financial alternative designed to augment the financing of certain capital projects.
  - b. When appropriate, a qualified service company may be utilized to provide design, financing, and installation of operating cost-savings projects related to energy, water, and the disposal of waste.
  - c. The District shall comply with state laws and regulations when considering or implementing any performance-based contracts, as well as Board policy related to capital projects, bids, and contracts.
2. Guiding Practices
  - a. If a project meets the criteria as outlined within this policy for a performance-based contract, and is recommended by staff to be pursued as a performance-based contract, it shall be presented to the Board of Trustees for approval.
  - b. The criteria for determining the work which will be evaluated includes, at the minimum:
    - i. Consists primarily of one or more operating cost savings measures;
    - ii. Qualifies to be performed pursuant to a performance contract with a return on investment within five (5) years or less and a minimum project value of one million dollars (\$1,000,000); and
    - iii. Would be more reasonably included under an existing performance contract rather than a new performance contract.

- c. The Superintendent shall establish administrative regulations and/or procedures to comply with this policy. This includes, but is not limited to the following provisions in compliance with state law:
  - i. Should the District determine not to enter into a performance contract for projects that meet the criteria for evaluation, the reasons for that determination shall be documented.
  - ii. Upon determination that a project is appropriate for a performance-based contract, the District shall use the criteria established within District regulation and/or procedure, as well as Nevada state law, to determine if an applicant is qualified to bid.
  - iii. Preparing an annual report which sets forth the operating cost-savings measures when required by state law (NRS 332.362).

## **DEFINITIONS**

1. A performance-based contract is a written contract between the District and a qualified service company for the evaluation, recommendation, and implementation of one or more operating cost-savings measures, to include energy cost savings.
2. "Qualified Service Company" means a person who is qualified to bid on a performance contract pursuant to NRS 332.351 to 332.353.
3. "Operating cost-savings measure" as defined in NRS 332.330 means any improvement, repair or alteration to a building, or any equipment, fixture or furnishing to be added or used in a building that is designed to reduce operating costs, including, without limitation, those costs related to electrical energy and demand, thermal energy, water consumption, waste disposal and contract-labor costs, and increase the operating efficiency of the building for the appointed functions that are cost-effective. See NRS 332.330 and 332.362 for further definition.

## **DESIRED OUTCOMES**

1. This policy, and the use of performance based contracting, will provide the District a financial alternative to augment the financing of certain capital projects. Such budgetary considerations are an initiative of the District's Strategic Plan.

## **IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS**

1. This policy reflects the goals of the District's Strategic Plan and aligns/complies with the governing documents of the District, to include:
  - a. Board Policy 3321, Bids/Quotations and Contracts
  - b. Board Policy 7400, Conservation and Sustainability

2. This policy complies with Nevada Revised Statutes (NRS) Chapter 332, Purchasing: Local Governments, and specifically:
  - a. NRS 332.300 – 332.440, Performance Contracts for Operating Cost-Savings Measures

**REVIEW AND REPORTING**

1. This document shall be reviewed as part of the bi-annual review and reporting process, following each regular session of the Nevada Legislature. The Board shall receive notification of any required changes to the policy.
2. Administrative regulations, and/or other associated documents, will be developed as necessary to implement this policy. The Board shall receive notification of the adoption and/or revision of any implementing administrative regulations.
3. The District shall report annually to the Nevada State Office of Energy the operating cost savings measures, if any, that:
  - a. Were identified in an approved Performance Based Contracting project’s financial-grade operational audit submitted to the Board of Trustees during the immediately preceding year (See NRS 332.360(5)); and
  - b. Were not included in a performance contract during the immediately preceding year.

**REVISION HISTORY**

Date	Revision	Modification
10/14/2014	1.0	Adopted
6/4/2019	2.0	Revised: Removed details to administrative regulation