

Business and Noninstructional Operations

BIDS

The Governing Board is committed to promoting public accountability and ensuring prudent use of public funds. When leasing, purchasing or contracting for equipment, materials, supplies, or services for the district, including when contracting for public projects involving district facilities, the Board shall explore lawful opportunities to obtain the greatest possible value for its expenditure of public funds. When required by law, or if the Board determines that it is in the best interest of the district, such contracts shall be made using competitive bidding.

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements for competitive bidding. (Public contract Code 22033)

The Superintendent or designee shall establish comprehensive bidding procedures for the district in accordance with law. Where required, the procedures shall include a process for advertising bids, instructions and timelines for submitting and opening bids, and other relevant requirements.

For award of contracts which, by law or Board policy, require prequalification, the procedures shall identify a uniform system for rating bidders on the basis of a completed questionnaire and financial statements.

When calling for bids, the Superintendent or designee shall ensure that the bid specification clearly describes in appropriate detail the quality, delivery, and service required and includes all information which the district knows, or has in its possession, that is relevant to the work to be performed or that may impact the cost of performing the work.

Except as authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

When the Board has determined that it is in the best interest of the district, the district may piggyback onto the contract of another public agency or corporation to lease or purchase any personal property to the extent authorized by law. (Public Contract Code 20118)

Legal Reference:

EDUCATION CODE

17070.10 - 17079.30 Leroy F. Green School Facilities Act

17250.10 - 17250.55 Design- build contracts

17406 Lease-leaseback contracts

17595 Purchase of supplies through Department of General Services

17602 Purchase of surplus property from federal agencies

38083 Purchase of perishable foodstuffs and seasonable commodities

Legal Reference: (continued on next page)

BIDS (continued)

Legal Reference: (continued)

- 38110 – 38120 Apparatus and supplies
- 39802 Transportation services
- BUSINESS AND PROFESSIONS CODE**
- 7056 General engineering contractor
- 7057 General building contractor
- CODE OF CIVIL PROCEDURE**
- 446 Verification of pleadings
- GOVERNMENT CODE**
- 4217.10 - 4217.18 Energy conservation contracts
- 4330-4334 Preference for California-made materials
- 6252 Definition of public record
- 53060 Special services and advice
- 54201-54205 Purchase of supplies and equipment by local agencies

PUBLIC CONTRACT CODE

- 1102 Emergencies
- 1103 Definition, responsible bidder
- 2000-2002 Responsive bidders
- 3000-3010 Roofing projects
- 3400 Bids, specifications by brand or trade name not permitted
- 3410 United States produce and processed foods
- 4113 Prime contractor; subcontractor
- 6610 Bid visits
- 12200 Definitions, recycled goods, materials and supplies
- 20101 - 20103.7 Public construction projects, requirements for bidding
- 20103.8 Award of contracts
- 20110 - 20118.4 Local Agency Public Construction Act; school districts
- 20189 Bidder's security, earthquake relief
- 22000 - 22045 Alternative procedures for public projects (UPCCAA)
- 22152 Recycled product procurement

COURT DECISIONS

- Los Angeles Unified School District v. Great American Insurance Co., (2010) 49 Cal.4th 739
- Great West Contractors Inc. v. Irvine Unified School District, (2010) 187 Cal.App.4th 1425
- Marshall v Pasadena USD, (2004) 119 Cal.App.4th 1241
- Konica Business Machines v. Regents of the University of California, (1988) 206 Cal.App.3d 449
- City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, (1972) 7 Cal.3d 861

ATTORNEY GENERAL OPINIONS

- 89 Ops.Ca.Atty.Gen. 1 (2006)

Management Resources:

WEB SITES

- CSBA: www.csba.org
- California Association of School Business Officials: www.casbo.org
- California Department of Education: <http://www.cde.ca.gov>
- California Department of General Services: <https://www/dgs.ca.gov>

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11/00 1/9/02
7/08
3/11/09
10/13
2/22/17

Business and Noninstructional Operations BIDS

Advertised/Competitive Bids

Where legally required, the district shall advertise for any of the following: (Public Contract Code 20111)

1. A public project contract that involves an expenditure of \$15,000 or more, including a contract for construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition, or repair work involving a district owned, leased, or operated facility
2. A contract that exceeds the amount specified in law, as annually adjusted by the Superintendent of Public Instruction, for any of the following:
 - a. The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district
 - b. Services, not including construction services, or special services and advice in accounting, financial, legal or administrative matters
 - c. Repairs, including maintenance that is not a public project

"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility, as well as repairs, cleaning, and other operations on machinery and other permanently attached equipment but does not include painting, repainting, or decorating other than touchup or other types of work, janitorial or custodial services and protection provided by security forces. (Public Contract Code 20115)

Instructions and Procedures for Advertised Bids

When legally required, the Superintendent or designee shall call for bids by placing a notice at least once a week for two weeks in a local newspaper of general circulation published in the district, or if no such newspaper exists, then in some newspaper of general circulation, circulated in the county. The Superintendent or designee also may post the notice on the district's web site or an electronic portal. The notice shall state the work to be done or materials or supplies to be furnished and the time and place and web site where bids will be opened. (Public Contract Code 20112)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall occur not less than five calendar days after the publication of the initial notice. (Public Contract Code 6610)

BIDS (continued)

Bid instructions and specifications shall include the following requirements and information:

1. All bidders, shall certify in writing the minimum, if not exact, percentage of post-consumer materials in products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)
2. All bids for construction work shall be presented under sealed cover. The district may accept a bid that has been submitted electronically or on paper. (Public Contract Code 20111, 20112)

The bid shall be accompanied by a form of bidder's security, including either cash, a cashier's check payable to the district, a certified check made payable to the district, or a bidder's bond executed by an admitted surety insurer and made payable to the district.

The security of unsuccessful bidders shall be returned in a reasonable period of time, but in no event later than 60 days after the bid is awarded. (Public Contract Code 20111, 20112)

3. When a standardized proposal form is provided by the District, bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)
4. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
5. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)
6. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #6a, below, shall be used. (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest total of the bid prices on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

BIDS (continued)

- c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to or subtracted from the base contract, are less than or equal to a funding amount publicly disclosed by the district before the first bid is opened.

The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the district before the ranking of all bidders from lowest to highest has been determined. (Public Contract Code 20103.8)

7. In determining the lowest bid, the district shall consider only responsive bids that conform to bid specifications and are submitted by responsible bidders.
 - a. When a bid is determined to be nonresponsive, the Superintendent or designee shall notify the bidder of this determination as part of the notice of intent to award the contract and give him/her an opportunity to respond to the determination.
 - b. When the lowest bidder is determined to be nonresponsive, the Superintendent or designee shall notify the bidder of this determination as part of the notice of intent to award the contract and of his/her right to present evidence of his/her responsibility at a hearing before the Board, pursuant to the process timeline/set forth in the "Protest of Bidders" section set forth in the AR 3311.
8. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for public review pursuant to law, Board policy, and administrative regulation.

Prequalification Procedure

For any public project for which bids are required that involves a project expenditure of two hundred and fifty thousand dollars (\$250,000) or more, the District shall prequalify (pursuant to the process below) the prime contractor and, if used, the electrical, mechanical, plumbing and iron/steel subcontractors. (Public Contract Code 20111.6)

For any contract for which bids are legally required, the Board requires that each prospective bidder and subcontractor complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall supply a form or use a questionnaire approved by the Department of Industrial Relations (DIR), which requires a complete statement of the bidder's financial ability and experience in performing public works. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records

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and shall not be open to public inspection.

Prospective bidders and subcontractor shall submit the questionnaire and financial statement at least ten business days before the date fixed for public opening of sealed bids. (Public Contract Code 20111.5 and Public Contract Code 20111.6)

The Superintendent or designee shall establish a uniform system for rating bidders and subcontractors on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. Bidders and subcontractors must be prequalified by the district at least ten business days before the fixed bid- opening date. (Public Contract Code 20111.5 and Public Contract Code 20111.6)

The district prequalifies bidders on a quarterly basis but reserves the right to accept prequalification packets up to thirty (30) days before any bid opening.

1. Medical Coverage

Contractor will be required to annually provide proof of Contractor's medical coverage for all employees and their families showing that the contractor has maintained employee medical coverage in good standing for all employees for 180 consecutive days immediately prior to the submission of the prequalification documents OR prove that the Contractor has offered such medical coverage or the opportunity for compensation in-lieu of health coverage in recognition of the opportunity for employees to access health care through the Covered California to its employees within 180 consecutive days immediately prior to the submission of the Prequalification documents. Additionally, contractors the Affordable Care Act (ACA) exempts from medical coverage participation cannot be excluded from the bidding.

2. Apprenticeship Programs

Contractor will be required to provide a Certified Statement of hiring from State of California Division of Apprenticeship Standards Approved apprenticeship programs that have a graduation rate of 50% or higher.

Contractor will be required to provide a Certified Statement of hiring from State of California Division of Apprenticeship Standards Approved apprenticeship programs. Contractor and subcontractors are required to provide a certified under penalty of perjury statement that the State of California Division of Apprenticeship Standards Approved apprenticeship program the prospective bidders are using has a yearly graduation rate of 50% or higher. Contractor and subcontractors with pass rates between 40-49% can petition the district for an exemption. Included in the request for exemption shall be a statement of reason for the need for an exemption.

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3. Local Hire Policy

Contractor will be required to provide documentation that they will follow the District's "Local Hire" policy, which mandates that the contractor hire a minimum of twenty-five percent (25%) of staff for any job classification with more than four (4) employees employed whose primary residence is, and has been, within the Counties of Sacramento, Yolo, Yuba, Sutter, Placer and El Dorado within 180 days of the issuance of the expected date of the Notice to Proceed for any district project.

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

Award of Contract

The district shall award each contract to the lowest responsible bidder except in the following circumstances:

1. When the contract is for the procurement and/or maintenance of electronic data processing systems and supporting software, in which case the Board may contract with any of the three lowest responsible bidders (Public Contract Code 20118.1)
2. When the contract is for any transportation service which involves an expenditure of more than \$10,000 and which will be made with a person or corporation other than a common carrier, municipally owned transit system, or a parent/guardian of a student who is to be transported, in which case the Board may contract with other than the lowest bidder (Education Code 39802)
3. When the contract is one for which the Board has established goals and requirements relating to participation of minority, women, disabled veteran or small business enterprises in accordance with Public Contract Code 2000-2002, in which case the Board may contract with the lowest responsible bidder who submits a responsive bid and complies or makes a good faith effort to comply with the goals and requirements. (Public Contract Code 2000-2002)

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was not in compliance with law, Board policy, or the bid's specifications. A protest must be filed in writing with the Superintendent or designee within five (5) working days after receipt of notification of the intent to award the contract and shall include all documents supporting or justifying the protest. A bidder's failure to file protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

BIDS (continued)

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days of receipt of the written bid protest. The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.

The bidder may appeal the Superintendent or designee's decision to the Board. The Superintendent or designee shall provide reasonable notice to the bidder of the date and time for Board consideration of the protest. The Board's decision shall be final.

Limitation on Use of Sole Sourcing

In any contract for the construction, alteration, or repair of school facilities, the Superintendent or designee shall ensure that the bid specification: (Public Contract Code 3002, 3400)

1. Does not directly or indirectly limit bidding to any one specific concern
2. Does not call for a designated material, product, thing, or service by a specific brand or trade name, unless the specification is followed by the words "equal," so that bidders may furnish any equal material, product, thing, or service

In any such case, the bid specification shall provide a time period, before and/or after the award of the contract, for the contractor to submit data substantiating the request for substituting the designated material, product, thing, or service. If no such time period is specified, the contractor may submit the data within 35 days after the award of the contract.

When the bid is for a roof project, a material, product, thing, or service is considered "equal" to that designated if it is equal in quality, durability, design, and appearance; will perform the intended function equally well; and conforms substantially to the detailed requirements in the bid specification.

However, the Superintendent or designee may designate a specific material, product, thing, or service by brand or trade name (sole sourcing), if the Board has made a finding, described in the invitation for bids or request for proposals (RFP), that a particular material, product, thing, or service is designated for any of the following purposes: (Public Contract Code 3400)

1. To conduct a field test or experiment to determine its suitability for future use
2. To match others in use on a particular public improvement that has been completed or is in the course of completion
3. To obtain a necessary item that is only available from one source

BIDS (continued)

4. To respond to the Board's declaration of an emergency, as long as the declaration has been approved by four-fifths of the Board when issuing the invitation for bid or RFP

Bids Not Required

Without advertising for bids and upon a determination that it is in the best interest of the district, the Board may authorize another public corporation or agency, by contract, lease, requisition, or purchase order, to lease data-processing equipment or to purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property for the district in the manner that the other public corporation or agency is authorized to make the leases or purchase from a vendor ("piggyback"). (Public Contract Code 20118)

Alternatively, if the public corporation or agency has an existing contract with a vendor for the lease or purchase of personal property, the district may authorize the lease or purchase of personal property directly from the vendor and make payments under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

Without advertising for bids, the Board may enter into an energy service contract and any related facility ground lease, when it determines that the terms of the contract and lease are in the best interest of the district and meet the cost effectiveness requirements specified in Government Code 4271.12. The Board's determination shall be made at a regularly scheduled public hearing of which notice is given to the public at least two weeks in advance and shall be based on cost comparison findings specified in Government Code 4217.12. (Government Code 4217.12)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

Perishable foodstuffs and seasonal commodities, needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code 38083)

In an emergency when any repairs, alterations, work or improvement to any school facility is necessary to permit the continuance of existing school classes, or to avoid danger to life or property, the Board may, by unanimous vote and with the approval of the County

Superintendent of Schools, contract for labor and materials or supplies without advertising for or inviting bids or may authorize the use of day labor or force account for the emergency purpose. (Public Contract Code 1102, 20113)

BIDS (continued)

Bids shall also not be required for day labor under circumstances specified in Public Contract Code 20114. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

The district may purchase any surplus property from the federal government or any of its agencies in any quantity needed for the operation of its schools without taking estimates or advertising for bids. (Education Code 17602)

- (cf. 1113 – District and School Web Sites)
- (cf. 1340 - Access to District Records)
- (cf. 3230 – Federal Grant Funds)
- (cf. 3300 - Expenditures and Purchases)
- (cf. 3311.1 – Uniform Public Construction Cost Accounting Procedures)
- (cf. 3311.2 – Lease-Leaseback Contracts)
- (cf. 3311.3 – Design-Build Contracts)
- (cf. 3311.4 – Procurement of Technological Equipment)
- (cf. 3510 - Green School Operations)
- (cf. 3512 – Equipment)
- (cf. 3580 – District Records)
- (cf. 6161.1 - Selection and Evaluation of Instructional Materials)
- (cf. 6161.11 - Supplementary Instructional Materials)
- (cf. 6163.1 - Library Media Centers)
- (cf. 3551 - Food Service Operations/Cafeteria Fund)
- (cf. 3517 - Facilities Inspection)

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