

PROCUREMENT PROCEDURES

BIDS

Board 5-27-08

BP 3311

The District shall purchase equipment, supplies and services using competitive bidding when required by law and in accordance with statutory requirements for bidding and bidding procedures.

When the Board of Trustees has determined that it is in the best interest of the District, the Board may piggyback onto the contract of another public agency or corporation to lease or purchase equipment or supplies to the extent authorized by law.

To ensure that good value is received for funds expended, specifications shall be carefully designed and shall describe in detail the quality, delivery and service required.

Legal Reference:

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38083 Purchase of perishable foodstuffs and seasonable commodities 38110
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38111 Purchases by District governing board 38112 Purchases of necessary
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39802 Transportation bids and contractsfor services GOVERNMENT CODE

4330-4334 Preference of California-made materials 6252 Definition ofpublic record

53060 Special services and advice

54201-54205 Purchase of supplies and equipment by local agencies PUBLIC CONTRACT CODE

2000-2001 Responsive bidders

3400 Bids, specifications by brand or trade name not permitted 3410 United States produce and processed foods

6610 Bid visits

12200 Definitions, recycled goods, materials and supplies

20103.8 Award of contracts 20107 Bidder's security

20111-20118.4 School Districts

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22030-22045 Alternative procedures for public projects (UPCCAA) 22050 Alternative emergency procedures

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ATTORNEY GENERAL OPINIONS

89 Ops.Cal.Atty.Gen. 1 (2006)

BIDS

Admin. Reg. 5-27-08 Advertised Bids

The District shall seek competitive bids through advertisement for contracts involving an expenditure of \$15,000 or more for a public project. (Public Contract Code 20111)

Public project means construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a District owned, leased, or operated facility. (Public Contract Code 22002)

The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

Competitive bids shall be sought through advertisement for contracts exceeding \$72,400 (2008) for the following: (Public Contract Code 20111; Government Code 53060)

1. The purchase of equipment, materials or supplies to be furnished, sold, or leased to the District
2. Services, not including construction services, or special services and advice in accounting, financial, legal, or administrative matters
3. 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. This definition does not include, among other types of work, janitorial or custodial services, and protection provided by security forces, nor does it include painting, repainting, or decorating other than touchup. (Public Contract Code 20115)

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

BIDS (Continued) Advertised Bids (Continued)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally owned transit system, or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

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 of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the District, or if no such paper exists then in some newspaper of general circulation, circulated in the county at least once a week for two weeks. The District may also post the notice on the District's web site or other electronic portal and may accept a bid submitted electronically or on paper as specified in the bid documents. The notice shall

state the work to be done or materials or supplies to be furnished and the time and place 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 not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

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

1. All bidders shall certify the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)

Instructions and Procedures for Advertised Bids (Continued)

1. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)

- a. Cash
- b. A cashier's check made payable to the District
- c. A certified check made payable to the District
- d. 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)

2. 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)

3. 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)

4. 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 #a below will 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.

Instructions and Procedures for Advertised Bids (Continued)

a. 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.

b. 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.

2. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

3. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board Policy, and Administrative Regulation.

4. A vendor may be released from a bid due to a clerical error when the following conditions exist:

a. If the error in the bid is very obvious, the vendor may be released upon written request prior to the award of the bid.

b. Subsequent to the award, the bidder may be released from his bid under the following circumstances:

1. The amount of the mistake must be material to the total amount of the contract

2. The mistake is not the result of neglect of a legal duty

3. The enforcement of the contract as made would be unconscionable

4. The District could be placed in status quo

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Competitive bids shall be sought through advertisement for contracts exceeding \$72,400 (2008) for the following: (Public Contract Code 20111; Government Code 53060)

1. The purchase of equipment, materials or supplies to be furnished, sold, or leased to the District

2. Services, not including construction services, or special services and advice in accounting, financial, legal, or administrative matters

3. 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. This definition does not include, among other types of work, janitorial or custodial services, and protection provided by security forces, nor does it include painting, repainting, or decorating other than touchup. (Public Contract Code 20115)

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BIDS (Cotinued) Advertised Bids (Continued)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally owned transit system, or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

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 of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the District, or if no such paper exists then in some newspaper of general circulation, circulated in the county at least once a week for two weeks. The District may also post the notice on the District's web site or other electronic portal and may accept a bid submitted electronically or on paper as specified in the bid documents. The notice shall state the work to be done or materials or supplies to be furnished and the time and place 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 not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

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

1. All bidders shall certify the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)

Instructions and Procedures for Advertised Bids (Continued)

2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)

- a. Cash
- b. A cashier's check made payable to the District
- c. A certified check made payable to the District
- d. 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)

3. 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)

4. 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)

5. 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 #a below will 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.

Instructions and Procedures for Advertised 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.

d. 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.

6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

7. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board Policy, and Administrative Regulation.

8. A vendor may be released from a bid due to a clerical error when the following conditions exist:

a. If the error in the bid is very obvious, the vendor may be released upon written request prior to the award of the bid.

b. Subsequent to the award, the bidder may be released from his bid under the following circumstances:

1. The amount of the mistake must be material to the total amount of the contract

2. The mistake is not the result of neglect of a legal duty

3. The enforcement of the contract as made would be unconscionable

4. The District could be placed in status quo

Instructions and Procedures for Advertised Bids (Continued)

5. The bidder gives prompt notice of his election to rescind

6. The bidder restores or offers to restore everything of value, which he has received under the contract.

Alternative Bid Procedures for Technological Supplies and Equipment

Upon a finding by the Board that a particular procurement qualifies for the alternative procedure, the District may acquire computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus through competitive negotiation. This procedure shall not apply to contracts for construction or for the procurement of

any product that is available in substantial quantities to the general public. (Public Contract Code 20118.2)

The competitive negotiation shall include, but not be limited to, the following requirements: (Public Contract Code 20118.1)

1. The Superintendent or designee shall prepare a request for proposals that shall be submitted to an adequate number of qualified sources, as determined by the District, to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
3. The District shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.
4. The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.
5. The District shall provide reasonable procedures for the technical evaluation of the proposals received, the identification of qualified sources, and the selection for the award of the contract.

Alternative Bid Procedures for Technological Supplies and Equipment (Continued)

6. An award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the District with price and all other factors considered.

7. If an award is not made to the bidder whose proposal contains the lowest price, then the District shall make a finding setting forth the basis for the award.
8. The District, at its discretion, may reject all proposals and request new proposals.
9. Provisions in any contract concerning utilization of small business enterprises, that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

Bids Not Required

Upon a determination that it is in the best interest of the District, the Board may authorize the purchase, lease, or contract for data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

When formal bid procedures are not used, written quotations are to be secured from at least three qualified vendors or contractors unless the item or service must be provided from only one source.

All quotations are to be included in the supporting documents justifying the purchase or work contract.

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

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

Bids Not Required (Continued)

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. (Public Contract Code 20113)

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)

Sole Sourcing

Specifications for contracts for construction, alteration, or repair of school facilities may not limit bidding, either directly or indirectly, to any one specific concern. Specifications designating a particular brand name shall follow the description with the words "or equal" so that bidders may furnish any equal material, product, thing, or service. (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name (sole sourcing) if the District has made a finding, described in the invitation for bids or request for proposals, 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
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 that issued the invitation for bid or request for proposals

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board Policy, the bid's specifications, or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. 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 time for Board consideration of the contract award. The Board's decision shall be final.

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The competitive negotiation shall include, but not be limited to, the following requirements: (Public Contract Code 20118.1)

1. The Superintendent or designee shall prepare a request for proposals that shall be submitted to an adequate number of qualified sources, as determined by the District, to permit reasonable competition consistent with the nature and requirement of the procurement.

2. Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.

3. The District shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

4. The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

5. The District shall provide reasonable procedures for the technical evaluation of the proposals received, the identification of qualified sources, and the selection for the award of the contract.

Alternative Bid Procedures for Technological Supplies and Equipment (Continued)

6. An award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the District with price and all other factors considered.

7. If an award is not made to the bidder whose proposal contains the lowest price, then the District shall make a finding setting forth the basis for the award.

8. The District, at its discretion, may reject all proposals and request new proposals.

9. Provisions in any contract concerning utilization of small business enterprises, that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

Bids Not Required

Upon a determination that it is in the best interest of the District, the Board may authorize the purchase, lease, or contract for data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

When formal bid procedures are not used, written quotations are to be secured from at least three qualified vendors or contractors unless the item or service must be provided from only one source.

All quotations are to be included in the supporting documents justifying the purchase or work contract.

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

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

Bids Not Required (Continued)

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. (Public Contract Code 20113)

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 201 14)

Sole Sourcing

Specifications for contracts for construction, alteration, or repair of school facilities may not limit bidding, either directly or indirectly, to any one specific concern. Specifications designating a particular brand name shall follow the description with the words "or equal" so that bidders may furnish any equal material, product, thing, or service. (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name (sole sourcing) if the District has made a finding, described in the invitation for bids or request for proposals, 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
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 that issued the invitation for bid or request for proposals

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board Policy, the bid's specifications, or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. 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 time for Board consideration of the contract award. The Board's decision shall be final.