

BIDS

Advertised/Competitive Bids

The district shall also seek competitive bids through advertisement for contracts exceeding the amount specified in law, as annually adjusted by the Superintendent of Public Instruction, for any of the following: (Public Contract Code 20111)

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 that are not a public project, including maintenance

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 among other types of work, janitorial or custodial services and protection provided by security forces. (Public Contract Code 20115)

Instructions and Procedures for Advertised Bids

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 through 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. The district may accept a bid that has been submitted electronically or on paper. (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 the 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 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 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. 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 Governing Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)

BIDS (continued)

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 #a 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.
 - 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. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.
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.
9. When a bid is disqualified as nonresponsive based on district investigation or other information not obtained from the submitted bid, the Superintendent or designee shall notify the bidder and give him/her an opportunity to respond to the information.

BIDS (continued)**Prequalification Procedure**

When required by law or the Board, each prospective bidder shall complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall provide a standardized proposal form which requires a complete statement of the bidder's financial ability and experience in performing public works. The bidder's 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 and shall not be open to public inspection. (Public Contract Code 20111.5, 20111.6)

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

The Superintendent or designee shall establish a uniform system for rating bidders 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 must be prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

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 one of the three lowest responsible bidders (Public Contract Code 20118.1)
2. For any transportation service contract involving an expenditure of more than \$10,000, which the Board contemplates 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, 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 complies or makes a good faith effort to comply with the goals and requirements (Public Contract Code 2000-2002)

BIDS (continued)

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award is not in compliance with law, Board policy, or the bid specification. A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award and shall include 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 date and time for Board consideration of the protest. The Board's decision shall be final.

Alternative Bid Procedures for Technological Supplies and Equipment

Rather than seek competitive bids, the Board may use competitive negotiation when it makes a finding that a district procurement is for computers, software, telecommunications equipment, microwave equipment, or other related electronic equipment and apparatus. Competitive negotiation shall not be used to contract 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 process shall include, but not be limited to, the following requirements: (Public Contract Code 20118.2)

1. The Superintendent or designee shall prepare a request for proposals (RFP) 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 RFP 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 Superintendent or designee 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 RFP is received.

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BIDS (continued)

4. The RFP shall identify all significant evaluation factors, including price, and their relative importance.
5. The Superintendent or designee shall provide reasonable procedures for the

- technical evaluation of the RFPs received, the identification of qualified sources, and the selection for the award of the contract.
6. The Board shall award the contract 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 the Board does not award the contract to the bidder whose proposal contains the lowest price, then the Board shall make a finding setting forth the basis for the award.
 8. The Board, at its discretion, may reject all proposals and request new RFPs.
 9. Provisions in any contract concerning utilization of small business enterprises that are in accordance with the RFP shall not be subject to negotiation with the successful proposer.

Sole Sourcing

In any contract for the construction, alteration, or repair of school facilities, the Superintendent or designee shall not draft the bid specification in a manner that: (Public Contract Code 3400)

1. Directly or indirectly limits bidding to any one specific concern
2. Calls for a designated material, product, thing, or service by a specific brand or trade name, unless the specification is followed by the words "or 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. (Public Contract Code 3002)

BIDS (continued)

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 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
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 purchases from a vendor ("piggyback"). 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)

In addition, upon a determination that it is in the best interest of the district and without advertising for bids, the Board may lease currently owned district property to any person, firm, or corporation for a minimum of \$1 per year, as long the lease requires the person, firm, or corporation to construct a building or buildings on the property for the district's use during the lease and the property and building(s) will vest in the district at the expiration of the lease ("lease-leaseback"). (Education Code 17406)

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. 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)

BIDS (continued)

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 20113)

Bids shall 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)

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Regulation

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EVERGREEN SCHOOL DISTRICT
San Jose, California