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# How Contracts Are Presented
## Board Study Session

July 13, 2024

Deidree Sakai

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# Outline

- Power to Contract
- Board Contracting Process
- Procurement
  - Competitive Bidding
  - Competitive Selection (Requests for Proposals)

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# Power to Contract



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# Power to Contract



School districts purchase a variety of items using contracts – equipment, materials, supplies, services, food, transportation, books, technology, construction, energy, software/licenses



The power to contract is vested in the Governing Board

See various sections – Education Code, Public Contract Code, Government Code

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# Power to Contract



**Power to contract = Award/Ratify Contracts**

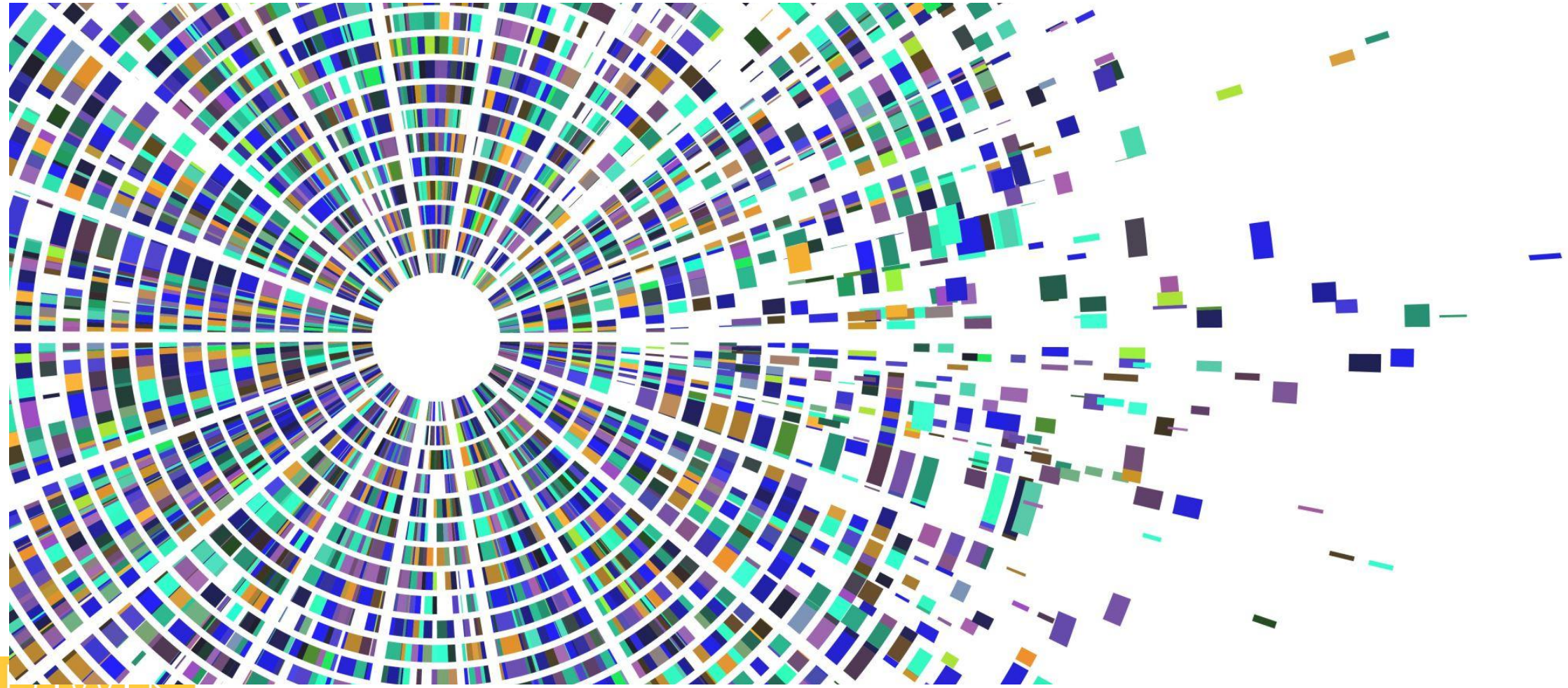


**Power to contract ≠ Procurement**

Preparation of contracts, including procurement is delegated to Superintendent or staff (see Board Policies/Administrative Regulations)

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# Board Contracting Process



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# Contracting Process



Staff prepares procurement documents, including the form of agreement



Bidding or Competitive Selection or Direct Negotiation, depending on what is being purchased



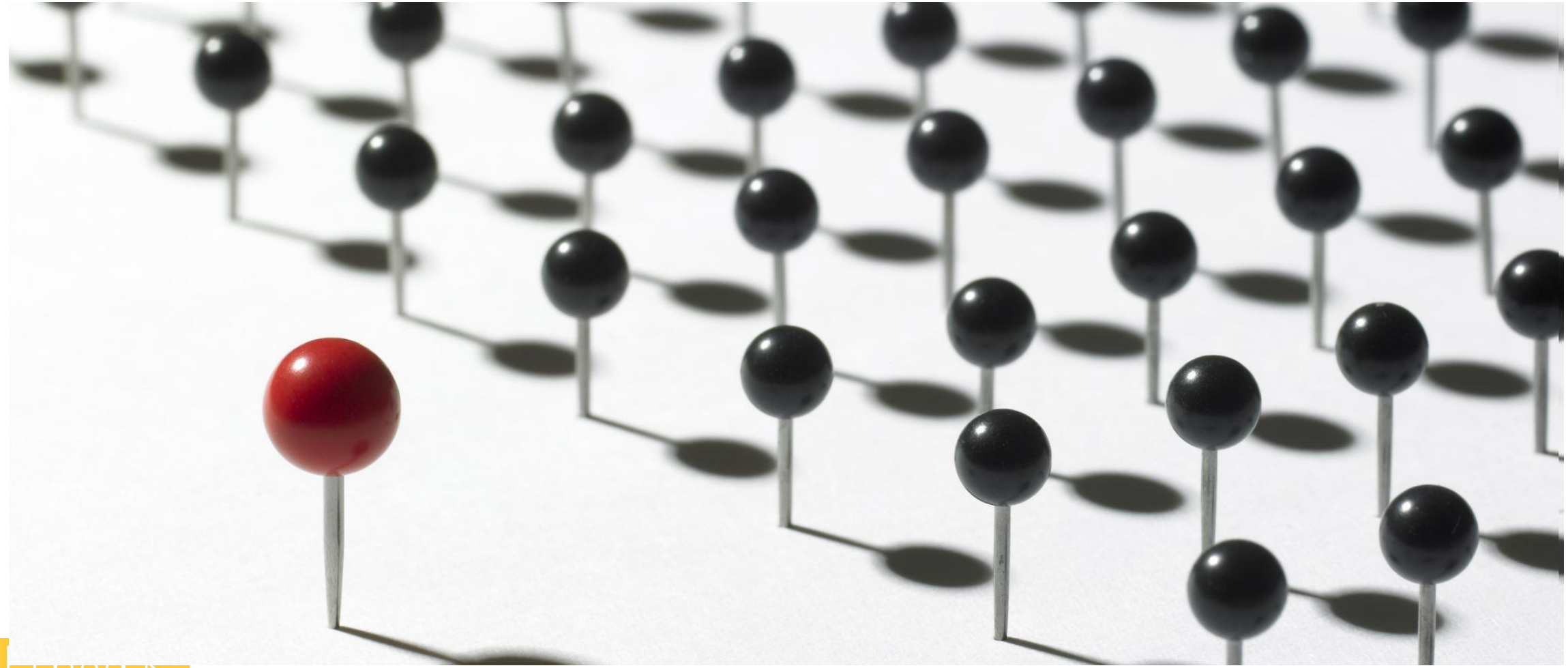
Staff prepares agenda item, summarizing background for contract, procurement process and recommendation



Governing Board awards the contract, confirming that the proper procurement process was followed and making required findings, if required.

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# Procurement



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# Procurement – Competitive Bidding

Board Policy 3311: "In order to ensure transparency and the prudent expenditure of public funds, Board of Trustees shall award contracts in an objective manner in accordance with law."

General Rule: School districts shall let contracts over the bid threshold to the lowest responsible bidder, or reject all bids (Pub. Contract Code, § 20111 et seq.)

- For school districts, a Request for Proposal does not satisfy competitive bidding requirements.

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# Bid Thresholds

- For purchase of equipment, materials, supplies, services, except construction services, and repairs, including maintenance, but not public works projects, bid threshold for 2024* is $114,500
  - *Superintendent of Public Instruction shall annually adjust the dollar amounts
- For construction services, bid threshold is $15,000
  - District has adopted CUPCCAA (California Uniform Public Construction Cost Accounting Act) increasing thresholds to:
    - No bid - $60,000
    - Informal bid – over $60,000, up to $200,000
    - Formal bid – over $200,000

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# Exceptions to Competitive Bidding

- Below Bid Threshold
- Child Nutrition (federal procurement standards)
- Professional/Special Services (Gov. Code, § 4525 et seq. and § 53060)
- Emergency
- Technology (Pub. Contract Code, §§ 20118.1 and 20118.2)
- Lease-Leaseback (Ed. Code, § 17406 et seq.)
- Design-Build (Ed. Code, § 17250.10 et seq. and § 17250.60 et seq.)
- Piggyback Contracts

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# Exception – Below Bid Threshold

- Competitive Bidding not required
- Pursuant to code, staff is allowed to directly negotiate contract with a single vendor (a.k.a. “sole source contract”).
  - Conflict of Interest rules apply.
- Code is the statutory minimum.  Districts are allowed to institute competitive selection procedures for increased transparency, i.e. formal Request for Proposals (RFPs).

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# Exception – Professional Services

Professional services require "specialized knowledge, training, or skill, usually of a mental or intellectual nature." (*Fair Education Santa Barbara v. Santa Barbara Unified School District*; see also Gov. Code, § 4525 et seq.)

Special services – "financial, economic, accounting, engineering, legal, or administrative matters" is not limited to aforementioned categories, particularly where services are not available from public sources. (Gov. Code, § 53060.)

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# Professional/Special Services – Examples

- Architects
- Engineers
- Construction Managers
- Environmental Consultants
- Technology
- Telecommunications
- Hazardous Materials
- Project Inspectors
- Roofing Assessment
- Acoustic
- Demographics
- Geotechnical Engineers
- Special Testing/Inspection
- Reprographics
- Aerial Photography
- Land Surveyor
- Subsurface Conditions
- Arborists
- Archeologist
- Food Service
- Security
- Traffic Consultant

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# Procurement – Competitive Selection

- Used for qualifications-based selection process.
- Evaluation Criteria is established by the District so that contractors may be scored/selected in an objective manner. Sometimes referred to as “Best Value.”
  - Contract may not be awarded to the firm with the lowest price.

- **NO BID THRESHOLD**

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# Competitive Selection – Basics

| | |
|---|---|
| RFQ | Request for Qualifications<br>• Results in pool of prequalified consultants, i.e. for the bond program; not a contract.<br>• District would need to take an additional step to award a contract, i.e. formal RFP or informal request for a particular project. |
| RFP | Request for Proposals<br>• Results in the award of contract, at the District's discretion |
| RFQ/P | Request for Qualifications and Proposals<br>• Streamlines process – instead of separate steps, qualifications are submitted and evaluated, resulting in contract. |

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# Competitive Selection - Requirements

- Unless provided by statute, there are no mandated requirements for RFQs and RFPs.
- Generally, the process should provide qualified contractors with a fair opportunity to participated in the competitive solicitation process, stimulating competition in a manner conducive to sound State fiscal practices emphasizing the elimination of favoritism, fraud, and corruption in awarding contracts.
  - Identifies significant evaluation factors and relative importance
  - Provides reasonable procedures for evaluation of proposals, identification of qualified sources and selection of award

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# What may be included?

- General Background
- Project Description
- Consultant Qualifications
- Scope of Services
- Submittal Requirements
- Selection Procedures
- Schedule of Events
- Form of Agreement

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# What is Best Value?

- A value determined by evaluation of objective criteria.
- A best value determination may involve the selection of the lowest cost proposal meeting the interests of the district and the objectives of the project, selection of the best proposal for a stipulated sum established by the district, or a tradeoff between price and other factors.
  - For example, technical experience, price, features, functions, life-cycle costs, proposed team, past performance, financial strength, litigation history
  - Criteria may be weighted or “pass/fail”

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# Bidding v. Competitive Selection

RFPs consider factors other than lowest price

Qualification-based selection not subject to bid threshold

RFPs do not need to be advertised

RFPs allow option for interview

Respondents to RFP are allowed to negotiate terms of contract

RFPs do not require bid protests/appeals

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# Statutorily-Required RFP

- Some statutes require a Request for Proposals (RFP):
  - Technology (Competitive Negotiation)
  - Lease-Leaseback (Best Value)
  - Design-Build (Best Value)
- The statutes have requirements such as advertising, mandatory criteria, Board findings when awarding the contract.
- In each of these situations, the Governing Board approves the procedure, as provided by statute, not the form of RFP.

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# Questions?



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