

Business and Noninstructional Operations

Bids (Incorporates CUPCCAA)

Advertised Bids

The District has elected to be bound by the Uniform Public Construction Cost Accounting Act (“CUPCCAA”). The CUPCCAA bid limits herein shall be adjusted as approved and set forth by statute and the CUPCCAA Commission.

Except when utilizing alternative procurement methods permitted by law, Board Policies, or as indicated herein, the District shall seek competitive bids through advertisement for contracts involving an expenditure of \$175,000 or more for a public project or maintenance work. For a public project or maintenance work involving an expenditure of \$45,000 to \$175,000, or those amounts prescribed by statute or the CUPCCAA Commission, the District shall utilize the informal bidding procedures as required. For a public project or maintenance work involving an expenditure of less than \$45,000, the District will let those contracts after negotiation or by force account and shall seek quotes, when feasible. (Public Contract Code 22000 et seq.)

"Public projects" include construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work for any District owned, leased or operated facility. (Public Contract Code 22002)

CUPCCAA Bidding and Advertising

Public projects of \$45,000 or less, or the amount as adjusted by statute or the CUPCCAA Commission, may be performed by the District’s employees by force account, negotiated contract, or by purchase order.

Public projects of \$175,000 or less, or the amount as adjusted by statute or the CUPCCAA Commission, may be let to contract by informal procedures as set forth by CUPCCAA and adopted by the District.

The District shall maintain a list of qualified contractors, identified according to categories of the work, consistent with criteria as set forth by the CUPCCAA Commission. All contractors on the list for the category or work being bid shall be mailed, faxed, and emailed a notice inviting informal bids unless the product or service is proprietary. All mailing of notices to contracts shall be completed not less than 10 calendar days before bids are due.

The District may elect to mail, fax, or email a notice inviting formal bids to those appropriate construction journals as deemed applicable to the District by the CUPCCAA Commission.

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The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

Notice inviting formal bids (public projects over \$175,000) shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least 14 calendar days before the date of opening the bids as follows:

- (1) In a newspaper of general circulation, printed and published in the District's jurisdiction;
or
- (2) If there is no newspaper printed and published within District's jurisdiction, in a newspaper of general circulation which is circulated within the District's jurisdiction; or,
- (3) If there is no newspaper which is circulated within the District's jurisdiction, publication shall be by posting the notice in at least three places within the jurisdiction designated as places for the posting of its notices.
- (4) The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all designated construction trade journals. The notice shall be sent at least 15 calendar days before the date of opening the bids.
- (5) In addition to notice, the District may give such other notice as it deems proper.

The District's Board may delegate the authority to award informal contracts to the appropriate District staff.

If all bids are received in excess of \$175,000, or the amount as adjusted by statute or the CUPCCAA Commission, the Board may, by adoption of a resolution by four-fifths vote, award the contract at \$187,500 or less, or the amount as adjusted by statute or the CUPCCAA Commission, to the lowest responsible bidder, if it determines cost estimate of the public agency was reasonable.

In its discretion, the District may reject any bids presented, if the District, prior to rejecting all bids and declaring that the project can be more economically performed by District employees, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the District's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the District intends to reject the bid.

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If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the District shall have the option of either of the following:

- (1) Abandoning the project or re-advertising for bids in the manner described herein;
- (2) By passage of a resolution by a four-fifths vote of the Board declaring that the project can be performed more economically by the District's employees, may have the project done by force account.

If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses.

If no bids are received through the formal or informal procedure, the project may be performed by the District's employees by force account or negotiated contract without further complying with this article.

In an emergency when any repairs, alterations, work or improvement to any school facility are necessary to permit the continuance of existing school classes, or to avoid danger to life or property, the Board may contract for labor and materials or supplies without advertising for or inviting bids pursuant to CUPCCAA as follows:

- (1) Pursuant to a four-fifths (4/5) vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;
- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) The Board, by a four-fifths (4/5) vote, may delegate the District Superintendent and/or its designee, the authority to order any action pursuant to paragraph (1);
- (4) If a person with authority delegated pursuant to paragraph (3) orders any action specified in paragraph (1), that person shall report to the Board, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency;

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- (5) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days;
- (6) If a person with delegated authority orders any action specified in paragraph (1), the Board shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action, unless a person with delegated authority has terminated that action prior to the Board reviewing the emergency action and making a determination pursuant to this subdivision. If the Board meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days;
- (7) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; (Public Contract Code 22050)

Non-CUPCCAA Bidding and Advertising

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 the amount established by the state of California per the annual state advisory for the following: (Public Contract Code 20111; Government Code 53060)

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the District
2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters
3. Repairs, including maintenance that is not a public project, subject to the bid limits of CUPCCAA.

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"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 contracted security services. (Public Contract Code 20115)

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

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 and responsive bidders. (Public Contract Code 20118.1)

The District may procure computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus through a request for proposal process that considers, in addition to price, the following in the award of those contracts: price, vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, competing products and materials available, fitness of purchase, manufacturer's warranties. (Public Contract Code 20118.2)

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)

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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 consecutive weeks. 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 plans 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 post-consumer materials in the 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 any 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)

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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 low 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, depending on the availability of funds, 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 bid price 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 taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.
 - d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.
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 review pursuant to law, Board policy, and administrative regulation.

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Prequalification Procedures – Discretionary

For any contract for which bids are legally required, the Board may, but is not required to, demand that each prospective bidder complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall supply a form which requires a complete statement of the bidder's financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at a date and time established by District staff that shall be at least five days before the date fixed for public opening of sealed bids. 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 and shall not be open to public inspection. (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 deemed prequalified by the District at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded. (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. Prospective bidders for such contracts shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids and shall be prequalified by the district at least one day before the fixed bid opening date. (Public Contract Code 20111.5)

Prequalification Procedure – Mandatory for Some State-Funded Projects

In addition to the discretionary prequalification procedures indicated above, for any contract awarded after January 1, 2014, the District shall prequalify all general contractors and electrical, mechanical, and plumbing subcontractors for public projects of \$1 million or more awarded on or after January 1, 2014, if any School Facilities Program funds (Education Code 17070.10-17079.30) or other future state school bonds are used. (Public Contract Code 20111.6; currently set to sunset on January 1, 2019.) The Governing Board is required to adopt a uniform system of rating bidders based on completed questionnaires and financial statements which must address, at a minimum, the issues covered by the standardized questionnaire and model guidelines

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developed by the Department of Industrial Relations for such purpose. (Public Contract Code section 20111.6; currently set to sunset on January 1, 2019)

Alternative Bid Procedures for Computers, Software, Telecommunications Equipment, Microwave Equipment, and Other Related Electronic Equipment and Apparatus

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 20118.2)

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 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 RFP is received.
4. The RFP 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 RFPs received, the identification of qualified sources, and the selection for the award of the contract.
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.

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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 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.

Electronic Data-Processing Systems and Supporting Software

When letting a contract for the procurement and/or maintenance of educational technology and information services equipment and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

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)

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. Prior to entering into a lease-leaseback agreement, the Superintendent or designee shall have on file the contractor's enforceable commitment that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. (Education Code 17406)

Without advertising for bids, the District 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

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public hearing of which notice is given to the public at least two weeks in advance and shall be based on cost saving and comparison findings specified in Government Code 4217.12. (Government Code 4217.10, et seq.)

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 commodities such as foodstuffs may be purchased through bid or on the open market, depending on District preference. (Education Code 38083)

Bids shall also not be required for day labor under circumstances specified in law. 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)

Districts with ADA of less than 35,000

Whenever the total number of hours on the job does not exceed 350 hours, day labor may be used to erect new buildings and for the following purposes:

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above.

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)

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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)

Specifications for contracts may designate a product by brand or trade name (sole sourcing) when the Board makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes: (Public Contract Code 3400)

1. In order that a field test or experiment may be made to determine the product's suitability for future use.
2. In order to match other products in use on a particular public improvement either completed or in the course of completion.
3. In order to obtain a necessary item that is only available from one source.
4. In order to respond to an emergency declared by (A) a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals; or (B) in order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

Protests by Bidders

A bidder may protest a bid award if it is believed that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

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A protest must be filed in writing with the Superintendent or designee as indicated in the bid or contract documents to which the protesting bidder is protesting. A protest will be handled in the manner indicated in those bid or contract documents.

If no time frame is indicated in those bid or contract documents, then the following provisions apply:

1. A protest can be filed within five business days following the date of bid opening. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.
2. The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 days. The Superintendent or designee also may, but is not required to, convene a meeting with the bidder in order to attempt to resolve the problem.
3. 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.

Legal Reference: Education Code, Sections 17406, 17595, 38083, 38110-38112, 39802
Government Code: 4217.10, et seq., 4330-4334, 6252, 53060, 54201-54205
Public Contract Code: 2000-2001, 3400, 3410, 6610, 20103.8, 20107, 20111-20118.4, 20189, 22000, et seq., 22002, 22030-22045, 22050

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