

**BIDS****AR 331 – NEW / REVISED**

The district shall advertise for competitive bids when any public project contract involves an expenditure of \$15,000 or more. *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 20111, 22002)

The district shall also advertise for competitive bids when a contract exceeds 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, 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. Maintenance 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, and 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 pre-bid 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 [who supply products, materials, goods or supplies to the district](#) 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 contract](#) 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 20111.56)
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.
  - 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.
7. The district shall consider only responsive bids from responsible bidders in determining the lowest bid. ([Public Contract Code 20111](#))
  - a. When a bid is determined to be nonresponsive, the Superintendent or designee shall notify the bidder 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 his/her right to present evidence of his/her responsibility at the hearing before the Board.
8. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.
9. 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.
10. 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.

### **Prequalification Procedure**

When required by law, ~~or the Board,~~ 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.~~ For this purpose, the Superintendent or designee shall furnish prospective bidders a standardized ~~prequalification questionnaire proposal form~~ which, when completed, shall indicate a bidder's statement of 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. ~~Bids not presented on the standard form shall be disregarded.~~ (Code of Civil Procedure 446; Public Contract Code ~~20111.5,~~ 20111.6)

When any public project involves an expenditure of \$1,000,000 or more and is funded or reimbursed wholly or partly by the School Facilities Program funds or other future state school bond, the district shall prequalify prospective bidders either quarterly or annually. The prequalification shall be valid for one year and the following requirements shall apply: (Education Code 17406, 17407; Public Contract Code 20111.6)

1. Prospective bidders, including, but not limited to, prime, general engineering, and general building contractors and electrical, mechanical, and plumbing subcontractors, as defined in ~~the Business and Professions Code 4113,~~ 7056, ~~or~~ 7057, ~~or~~ 7058, as applicable, shall submit a standardized questionnaire and financial statement ~~40~~ten or more business days, as determined by the district, before the date fixed for the public opening of sealed bids.
2. Prospective bidders shall be prequalified by the district five or more business days, as determined by the district, before the date fixed for the public opening of sealed bids.

If the project includes electrical, mechanical, or plumbing components that will be performed by electrical, mechanical, or plumbing contractors, the Superintendent or designee shall make available to all bidders a list of prequalified general contractors and electrical, mechanical, and plumbing ~~sub~~contractors five or more business days, as determined by the district, before the date fixed for the public opening of sealed bids.

For all other contracts requiring competitive bidding, 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)~~

### **Award of Contract**

The district shall award each contract subject to the provisions of Public Contract Code 20111 to the lowest responsible bidder except in the following circumstances or where otherwise permitted by law:

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. When the contract is for any transportation service which involves an expenditure of more than \$10,000 and which will be made with any 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 procuring a lease-leaseback contract, in which case the Board shall award the contract based on objective criteria for determining the best combination of price and qualifications in accordance with Education Code 17400 and 17406.
4. When procuring a design-build contract for a public works project in excess of \$1,000,000 in accordance with Education Code 17250.20, in which case the Board may award the contract to either the low bid or the best value to the district, taking into consideration, at a minimum, price, technical design and construction expertise, and life-cycle costs (Education Code 17250.20, 17250.25)

~~3. When the contract is one for which the Board has established goals and requirements relating to participation of 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~~ the district's intent to award a contract if ~~he/she~~ the bidder believes that the award ~~was~~ would be inconsistent with ~~Board policy,~~ the bid's specifications, or ~~was~~ not in compliance with law. A protest must be ~~filed~~ submitted in writing ~~with~~ to the Superintendent or designee within five ~~working~~ calendar days ~~following the issuance of the district's notice after receipt of notification~~ of intent to award the contract. ~~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 written protest must set forth, in detail, all grounds for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest; any matters not set forth in the written protest are deemed waived.

Any bid protest not conforming to the foregoing will be rejected by the district as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the Superintendent or designee shall review and evaluate the basis of the bid protest. The Superintendent or designee will provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of the bid protest as reflected in the written statement of the Superintendent or designee. Action by the Board relative to a bid

protest shall be final and not subject to appeal or reconsideration by the Superintendent or any other employee or officer of the district.

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 notice to the bidder of the date and time for Board consideration of the protest at least three business days before the Board meeting. The Board's decision shall be final.

### **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 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 "or equal," so that bidders may furnish any equal material, product, thing, or service

~~In such case, the~~ 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 a~~ 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. (Public Contract Code 3400)

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
5. To respond to an emergency declared by the state, a state agency, or political subdivision of the state. In such case, the Superintendent or designee will set forth in the public records the facts for the reasons for the finding of the emergency.

### **Bids Not Required**

#### A. "Piggyback" Contracts

Without advertising for bids and upon a determination that it is in the best interests of the district, the Board may authorize, by contract, lease, requisition, or purchase order, another public corporation or agency 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"). (Public Contract Code 20118)

Alternatively, if there is an existing contract between a public corporation or agency and 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 by contract, lease, requisition, or purchase order and make payment to the vendor under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

#### B. [Energy Service Contracts](#)

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 interests 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)

#### C. [Educational Materials and Books](#)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount [needed for the operation of the district's schools](#) without taking estimates or advertising for bids. (Public Contract Code 20118.3)

#### D. [Perishable Commodities](#)

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

#### E. [Emergencies](#)

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)

#### F. [Day Labor](#)

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)

#### G. [Federal Surplus Property](#)

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)