

CSBA Sample

Board Policy

Bids

BP 3311

Business and Noninstructional Operations

Note: Pursuant to Public Contract Code 20111 and 22002, public contracts for the lease or purchase of equipment, materials, supplies, or services or for "public projects," as defined, are required to be competitively bid when they involve expenditure of specified amounts. An alternative procedure for public works projects is provided pursuant to the Uniform Public Construction Cost Accounting Act (UPCCAA) (Public Contract Code 22030-22045), as described below.

The Governing Board is committed to promoting public accountability and ensuring prudent use of public funds. When leasing, purchasing, or contracting for equipment, materials, supplies, or services for the district, including when contracting for public projects involving district facilities, the Board shall explore lawful opportunities to obtain the greatest possible value for its expenditure of public funds. When required by law, or if the Board determines that it is in the best interest of the district, such contracts shall be made using competitive bidding.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 3000 - Concepts and Roles)

(cf. 3300 - Expenditures and Purchases)

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading legal requirements regarding contracting after competitive bidding. (Public Contract Code 20116, 22033)

Note: Requirements for competitive bidding, including notice and advertising, are specified in Public Contract Code 20110-20118.4. See the accompanying administrative regulation.

The Superintendent or designee shall establish comprehensive bidding procedures for the district in accordance with law. The procedures shall include a process for advertising bids, instructions and timelines for submitting and opening bids, and other relevant requirements.

***Note: Pursuant to Public Contract Code 20111.5, the district is permitted, but not required, to establish prequalification procedures for any contract for which bids are legally required; see the accompanying administrative regulation. However, pursuant to Public Contract Code 20111.6, a district with average daily attendance of 2,500 or greater is required to 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 School Facilities Program funds (Education Code 17070.10-17079.30) or other future state school bonds are used. In addition, 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 developed by the Department of Industrial Relations for such purpose.***

For award of contracts which, by law or Board policy, require prequalification, the procedures shall identify a uniform system for rating bidders and shall address the issues covered by the standardized questionnaire and model guidelines developed by the Department of Industrial Relations pursuant to Public Contract Code 20101.

(cf. 9270 - Conflict of Interest)

Note: Districts should be careful in crafting bid specifications, as a misleading specification that results in a lower bid than might have been made may make the district liable for the extra work done or expenses incurred by the contractor. In *Los Angeles Unified School District v. Great American Insurance Co.*, the California Supreme Court held in favor of a contractor who was misled by the district's nondisclosure of material information that would have affected the contractor's bid.

When calling for bids, the Superintendent or designee shall ensure that the bid specification clearly describes in appropriate detail the quality, delivery, and service required, and includes all information which the district knows, or has in its possession, that is relevant to the work to be performed or that may impact the cost of performing the work.

Note: Pursuant to Public Contract Code 20111, a contract required to be put out to bid must be awarded to the lowest responsible bidder. A "responsible bidder" is one who possesses the quality, fitness, and capacity to satisfactorily perform the proposed work. (*City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court*)

Note: However, a bid may be awarded to other than the "lowest responsible bidder" when conditions specified in law exist. For example, a district is permitted to give preference to minorities, women, veterans, and small businesses in accordance with Public Contract Code 2000-2002. In addition, Education Code 17250.10-17250.55, as added by AB 1358 (Ch. 752, Statutes of 2015), authorize the district to award a design-build contract for a public works project in excess of \$1 million on the basis of either low bid or "best value," as defined. See "Award of Contract" section in the accompanying administrative regulation.

Except as authorized by law and specified in the administrative regulation, contracts shall be let to the lowest responsible bidder who shall give such security as the Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

***Note: Pursuant to Public Contract Code 20118, districts may be exempt from the bidding requirements and may "piggyback" onto the bid of any public corporation or agency for specific items when the Board determines it is in the best interest of the district. See the accompanying administrative regulation for a list of those items that may be leased or purchased using this

procedure.***

When the Board has determined that it is in the best interest of the district, the district may piggyback onto the contract of another public agency or corporation to lease or purchase equipment or supplies to the extent authorized by law. (Public Contract Code 20118)

Note: The following optional paragraph is for use by districts that have elected to use the alternative contracting procedure for public works pursuant to the UPCCAA (Public Contract Code 22030-22045) and should be deleted by districts that have not elected to use such alternative procedure. Pursuant to Public Contract Code 22030, the district may participate in the UPCCAA only if the Board adopts a resolution requiring the use of the UPCCAA in district contracting and notifies the State Controller of that action. In the event of a conflict with any other provision of law relative to bidding procedures, the UPCCAA shall apply to any district that has adopted a resolution and so notified the Controller. According to the California Uniform Construction Cost Accounting Commission's "Frequently Asked Questions," available on its web site, withdrawal from the UPCCAA requires the Board to file a resolution of the election to withdraw with the State Controller.

Comment [J1]: PSD has not adopted UPCCAA

Note: In electing to be subject to the UPCCAA, a district thereby agrees to follow the cost accounting procedures set forth in the Cost Accounting Policies and Procedures Manual of the California Uniform Construction Cost Accounting Commission. According to the "Frequently Asked Questions" on the Commission's web site, school districts may use the statewide Standardized Account Code Structure to comply with tracking requirements.

Note: Pursuant to Public Contract Code 22032, projects of \$45,000 or less may be performed by the district's own work force; projects of \$175,000 or less may use a more informal bidding procedure as specified; and projects over \$175,000 require formal bidding procedures. See the accompanying administrative regulation for related requirements.

Note: In circumstances where the informal bidding procedure is authorized, Public Contract Code 22034 allows the Board to delegate the authority to award contracts to an appropriate district administrator. Public Contract Code 22039 allows the Board to delegate the adoption of plans, specifications, and working details for projects subject to formal bidding procedures. The following paragraph may be revised to reflect district practice.

~~For use in contracting for public works projects, the Board has, by resolution, adopted the procedures set forth in the Uniform Public Construction Cost Accounting Act pursuant to Public Contract Code 22030-22045, including the required cost accounting procedures and the informal bidding procedures when allowed by law. The Board delegates to the Superintendent or designee the responsibilities to award any contract eligible for informal bidding procedures and to develop plans, specifications, and working details for all public projects requiring formal bidding procedures.~~

Legal Reference:

EDUCATION CODE

17070.10-17079.30 Leroy F. Greene School Facilities Act
17250.10-17250.55 Design-build contracts
17406 Lease-leaseback contract
17595 Purchase of supplies through Department of General Services
17602 Purchase of surplus property from federal agencies
38083 Purchase of perishable foodstuffs and seasonable commodities
38110-38120 Apparatus and supplies
39802 Transportation services

CODE OF CIVIL PROCEDURE

446 Verification of pleadings

GOVERNMENT CODE

4217.10-4217.18 Energy conservation contracts
4330-4334 Preference for California-made materials
6252 Definition of public record
53060 Special services and advice
54201-54205 Purchase of supplies and equipment by local agencies

PUBLIC CONTRACT CODE

1102 Emergencies
2000-2002 Responsive bidders
3000-3010 Roofing projects
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
20101-20103.7 Public construction projects, requirements for bidding
20103.8 Award of contracts
20107 Bidder's security
20110-20118.4 Contracting by school districts
20189 Bidder's security, earthquake relief
22002 Definition of public project
22030-22045 Alternative procedures for public projects (UPCCAA)
22050 Alternative emergency procedures
22152 Recycled product procurement

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)
Davis v. Fresno Unified School District, (2015) 237 Cal.App.4th 261
Los Angeles Unified School District v. Great American Insurance Co., (2010) 49 Cal.4th 739
Great West Contractors Inc. v. Irvine Unified School District, (2010) 187 Cal.App.4th 1425
Marshall v. Pasadena Unified School District, (2004) 119 Cal.App.4th 1241
Konica Business Machines v. Regents of the University of California, (1988) 206 Cal.App.3d 449
City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, (1972) 7 Cal.3d 861

ATTORNEY GENERAL OPINIONS

Attachment A6 - Use CSBA Policy with revisions

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

Management Resources:

CALIFORNIA UNIFORM CONSTRUCTION COST ACCOUNTING COMMISSION
PUBLICATIONS

Cost Accounting Policies and Procedures Manual

Frequently Asked Questions

WEB SITES

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>

California Uniform Construction Cost Accounting Commission:

http://www.sco.ca.gov/ard_cuccac.html

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