

# Public Bid Process “One Pager” Summary

## Schools Legal Service



1. **Determine Whether Bidding is Required:** All purchases that exceed the legal bid threshold for contracts awarded by school districts must adhere to legal bid procedures required by the State of California, unless an exception applies.<sup>1 2</sup> The bid limit varies depending on the items or services being contracted. Please see the attached three SLS Matrixes of 2023 Bidding Requirements [(i) Non-construction; (ii) CUPCCAA; and (iii) Non-CUPCCAA] to determine whether your contract exceeds the applicable threshold and must be bid, or whether an exception to bidding is available.
2. **Assemble the Bid Package:** If the district is required to bid the contract, the district must determine what it will need to require from bidders in the bid package. This varies by project, but a bid package typically includes the following:
  - **Construction:** notice calling for bids; instructions to bidders (including protest procedures and submission deadlines); plans and specifications; a copy of the contract (including General and any Supplemental Conditions and change order form); substitution listing and list of subcontractors; exclusion of asbestos products; bidder's security, notice of performance and payment bond; worker's compensation, fingerprinting, Davis Bacon and Drug-free Workplace certifications; standardized bid form, prequalification questionnaire and financial statement form (if work being bid requires prequalification); certification of eligibility (per Iran Contracting Act, required for contracts for construction services over \$1,000,000 paid for in whole or in part from State Facility Bond proceeds); any unit price requirements and timeline (for materials and supplies); any additive and deductive bid alternates; time, date and location of any mandatory prebid site visits, conferences or meetings<sup>3</sup>; DIR registration and prevailing wage rate requirements;<sup>4</sup> contractors' license requirements; non-collusion declaration; escrow agreement; and guarantee.
  - **Materials, Equipment, Supplies, Maintenance and/or Non-Construction/Non-Professional Services:** notice calling for bids including date, time and place for receipt of bids by the District; instructions to bidders; specifications (or description) of the services or items required; any additive and deductive bid alternates; purchase order form or purchase contract; and standardized bid form. Bid security, performance and payment bonds may be required as per district policies.
3. **Publish a Notice Calling for Bids:** After the bid package is prepared, the district must publish a notice calling for bids at least once a week for two weeks (with at least 5 days intervening between the publication dates) in a newspaper of general circulation published in the district (or in county if none).<sup>5</sup> The notice must state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. The notice must also state when and where the bid package can be obtained in hardcopy and/or electronic format. It is advisable that the district also include language in the notice reserving the district's right to reject all bids.<sup>6</sup> See the SLS CUPCCAA Matrix for bidding and notice requirements for CUPCCAA, which are slightly different.
4. **Prequalification:** Prequalification of bidders is required for construction projects over \$1,000,000 if district ADA is 2,500 or more and the project is funded, in whole or in part, with any state bond funds. Contractors who must prequalify for such projects include general contractors (A, B), as well as eleven identified mechanical, electrical, and plumbing (“MEP”) subcontractor license classifications. Districts can elect to prequalify prospective bidders on a project-by-project basis (i.e., during the period between publication of notice calling for bids and bid opening), or establish a process for prequalification on a quarterly, annual or “rolling” basis, in which case prequalification would last one year.<sup>7</sup> To prequalify bidders, the district must require the submission of a

<sup>1</sup> Instead of bidding, a Request for Qualifications/Proposals (“RFQ” or “RFP”) process is required to hire architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms.

<sup>2</sup> Statutory exceptions include Change Order for Material and Supplies; Computers, Software, Telecommunications Equipment, Microwave Equipment and Related Electronic Equipment and Apparatus; Educational Material; Perishable Foodstuffs and Seasonal Commodities; Surplus Federal Property; Energy Service and Conservation Contracts; “Piggybacking” on other Public Agency Contracts; Acquisitions from California Multiple Award Schedules (CMAS) Including Acquisitions of Information Technology Goods and Services; Emergency Repair Contracts; Day Labor; Contracts for Special Services; and Joint Powers Agency Purchasing Agreements. Other exceptions include the “public policy” exception, completion of construction contracts upon default of contractor where contract reserves such a right to the district, and where bidding would be “futile and unavailing” (i.e. sole source supplier of a needed commodity or where bidding would not produce any advantage).

<sup>3</sup> Prebid site visit, conference or meeting cannot be held before a minimum of 5 calendar days of the publication of the initial notice have passed.

<sup>4</sup> All contractors and subcontractors must register with the Department of Industrial Relations (“DIR”) as a precondition to bidding on or being listed in any bid for a public works contract. Bidders must include the DIR registration numbers for all subcontractors their bid.

<sup>5</sup> E-rate funded projects must publish a notice and allow 28 calendar days for proposal submittals before bid opening.

<sup>6</sup> If the district has expressly reserved the right to reject all bids, it may do so for any reason and at any time before it accepts a bid, and the courts will not interfere with the exercise of that right.

<sup>7</sup> Lease-leaseback requires prequalification of contractors on a quarterly or annual basis only.

standardized prequalification questionnaire and financial statement verified under oath, and use a uniform system for rating the bidders on the basis of their submissions. The district cannot accept a bid from a contractor if any of the contractor's listed subcontractors who are required to prequalify have failed to submit a completed standardized questionnaire and financial statement within 10 business days prior to the bid opening date, or have not been prequalified for at least 5 business days prior to the bid opening date. The district has discretion to require prequalification document submissions earlier than this and set a longer time before the bid opening date to conduct the prequalification process. The district must make a list of the prequalified general contractors and MEP subcontractors available to all bidders at least 5 business days prior to the bid opening date.

5. **Bid Opening Procedures:** The district must promptly open all bid proposals on the date and at the time and place stated in notice calling for bids or any extension thereof.<sup>8</sup> The board must return unopened all bids received after the bid opening time. All bid openings are public and bids are read aloud and tabulated at that time. Once bids are opened, no changes can be made. If a bidder realizes a mistake has been made, the bidder has two options: (1) honor the bid as written; or (2) withdraw the bid on the item(s) in question or the entire bid by giving notice within 5 business days after bid opening. At the end of the bid opening, the district identifies the "apparent" low bidder.
6. **Bid Evaluation:** If any bid does not meet all of the material bid specifications or agree to all of the material contractual provisions that bid must be deemed non-responsive bidder and be rejected.<sup>9</sup> If a bid is rejected as non-responsive, the bidder must be given notice and an opportunity to submit materials in a manner defined by the district concerning the issue of responsiveness. On the other hand, where a bidder is deemed non-responsible, the district is required to conduct a hearing and allow the bidder to present evidence that it is qualified to perform the contract. Unless otherwise authorized by statute, the district must award the contract to the lowest responsive and responsible bidder or reject all bids. The district must return any bidder's security received from unsuccessful bidders within 60 days from the time of the award. In the odd chance that the district receives two identical bids, the award must be determined by lot.
7. **Bid Protests:** Bidders can object by sending a notice that the contract should not be awarded to the apparent low bidder for the reasons stated in the notice (e.g. by protesting that district failed to comply with the bid process, the low bidder is non-responsive or not responsible or qualified, or requesting district to reject all bids and allow the protesting bidder to participate in a rebid). There are no statutory or uniform procedures for bid protests. Each district must develop its own protest procedures (which usually involve a hearing). After hearing a protest, the district can: (1) reject the protest and accept the protested low bid, (2) accept the protest, reject the protested bid, and accept the next lowest responsible bid, or (3) reject all bids and rebid the project. Always respond in writing to bid protests. Never send or give out copies of or information within the prequalification questionnaires and financial statements, as these are not public records, and therefore not subject to public review.
8. **Bid Award Notification:** The district should issue the official bid award notification and may delegate this authority to the superintendent or designee. The contract award date should be scheduled sufficiently after the bid opening date to allow time for the district to address any bid protests and respond to any related public records requests or protective orders for bid documents. In setting the award date, the board should also take into account the time needed to resolve all issues prior to any funding deadlines (such as E-rate). For construction projects requiring DIR registration, the district must submit a form "PWC-100" (award notice) to the DIR within 30 days of the award, but no later than the start of work.
9. **Entering into Contract after Competitive Bidding:** The contract entered into must substantially conform to the contract terms included in the bid documents. Courts have determined that changes in the amount payable, the date, the time and place of performance, the medium of payment, and in the number or relation of parties are substantial and material changes violates the statutory competitive bidding requirement and voids the contract. The contract must be approved and/or ratified by the governing board, even when contracting authority has already been delegated to designee. A public entity may, on refusal or failure of the successful bidder to execute the contract, award the contract to the second lowest bidder.<sup>10</sup>

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<sup>8</sup> If the district issues any material change (one with a substantial cost impact on the total bid) within seventy-two hours prior to bid closing, it must also extend the date and time for closing of submissions of bids by no less than seventy-two hours.

<sup>9</sup> The district has discretion to waive minor irregularities in the bid documents if irregularity is not a statutory requirement or does not create a competitive advantage for the bidder (such as a missed checkbox).

<sup>10</sup> However, the district only has 60 days from the date of the award to award to a second lowest bidder (i.e. while it is still holding bidder's security).