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File ID Number	16-0238
Introduction Date	2/24/16
Enactment Number	16-0391
Enactment Date	3/9/16



Memo

To Board of Education

From Antwan Wilson, Superintendent
Jacqueline P. Minor, Co-General Counsel

Board Meeting Date February 10, 2016

Subject Amendments to Board Policy BP 3311

Action Requested **Approval by the Board of Education of modifications in Board Policy 3311**

Background and Discussion

Consistent with California law, Board Policy BP 3311 is being modified to make it clear that most contracts should be competitively except as provided in the Board Policy. The revised Board Policy provides that effective July 1, 2016, except as expressly provided in this Board Policy or by statute, contracts for a "public project," as defined in California Public Contract Code section 22002, subdivision (c) involving an expenditure of \$15,000 or more shall be awarded to the lowest responsible bidder, and contracts for the lease or purchase of equipment, materials, supplies or services if they involve an expenditure of \$87,800 or more, as annually adjusted, shall be competitively bid.

The exceptions are listed in the Board Policy. The major exceptions include:

1. **CUPCCAA.** The District is a **CUPCCAA**¹ approved and certified school district. This means that construction contracts between \$45,000 and \$175,000 can be let using informal procedures.
2. **Professional Service Agreements** and contracts for materials, supplies, equipment and/or services costing less than the bid limit, which is \$87,800 (but increases a small amount on January 1 of each year), do not have to be formally bid. (Public Contract Code Section 20111(a)).
3. **Construction related Professional Services** such as Architects, Division of State Architects (DSA) Inspectors, Environmental Consultants and Construction Managers require a "fair, competitive selection process."
4. **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources) are exempt from competitive bidding.
5. **Emergency** contracts do not need to be formally bid, but the Board

¹ The Uniform Public Construction Cost Accounting Act

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 3311

Business and Noninstructional Operations

Bids

The Governing Board Requires Competitive Bidding For Most Public Contracts

Consistent with California law, the Governing Board requires competitive bidding for most public contracts. The purposes of competitive bidding are to secure economy in the construction of public works and the expenditures of public funds for materials and supplies, to protect the public from collusive contracts, to exclude favoritism and corruption, and to promote competition among bidders so as to ensure that all public contracts are secured at the lowest cost to District taxpayers.

Effective July 1, 2016, except as expressly provided in this Board Policy or by statute, contracts for a "public project,"¹ as defined in California Public Contract Code section 22002, subdivision (c) involving an expenditure of \$15,000 or more shall be awarded to the lowest responsible bidder, and contracts for the lease or purchase of equipment, materials, supplies or services if they involve an expenditure of \$87,800 or more, as annually adjusted, shall be competitively bid. All contracts submitted to the Board for approval shall include the Contract Justification Form that is attached hereto as Attachment A. Attachment A may be modified from time to time.

The Uniform Public Construction Cost Accounting Act (the "CUPCCAA or the "Act")²

On October 14, 2009, the Board of Education approved Resolution No. 0910-0090 adopting the Uniform Public Construction Cost Accounting Act and authorizing the District to use "Informal Bidding Procedures" to award contracts between \$45,000 and \$175,000. The Uniform Public Construction Cost Accounting Act (the "CUPCCAA") is an exception to the general rule that school districts must competitively bid most public contracts. Under CUPCCAA the formal bid thresholds for the District is \$175,000 (which amount may be adjusted from time to time). Therefore, the District may award public projects between \$45,000 and \$175,000 using "informal bidding procedures" as provided in the law.

Governing Board May Request That A Contract Be Competitively Bid If The Board Determines That It Is In The Best Interest of The District To Do So

¹ The term "public project" is defined in as any of the following:

- a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- b) Painting or repainting of any publicly owned, leased, or operated facility.

However, public project does not include janitorial or custodial services, or routine, recurring and usual work necessary to maintain public property, minor repainting, landscape maintenance, etc.

² Public Contract Code section 22000 et seq



must approve a resolution declaring the need for and Emergency Contract.

6. **Technology** contracts:
 - a. for electronic data-processing systems and supporting software equipment and/or services (including copiers/printers) over the \$87,800 bid limit (which is subject to annual adjustment), must be competitively advertised, but any one of the three lowest responsible bidders may be selected – Public Contract Code 20118.1;
 - b. Contracts for Computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive bid process and the basis for award does not need to be the lowest price.
7. **Educational Materials** (books, textbooks, test materials, educational computer software) are exempt from competitive bid.
8. **"Piggyback" Contracts.** Contracts issued by other governmental entities that authorize use of the same contract terms by other governments (this is called "piggyback" contracts).
9. **Western States Contracting Alliance Contracts (WSCA) and California Multiple Award Schedule Contracts (CMAS).** Contracts that are approved for use by governmental entities by entities such as Western States Contracting Alliance Contracts (**WSCA**) and California Multiple Award Schedule (**CMAS**). WSCA and CMAS contracts are often used for the purchase of information technology and software.
10. **Perishable Food** contracts do not need to be competitively bid.
11. **Sole Source** contracts do not have to be competitively bid.
12. **Special Services** contracts for financial, economic, accounting, legal or administrative services; insurance services; waste management services do not have to be competitively bid.
13. **Change Order for Material and Supplies.** Public Contract Code authorizes the change or alteration of an existing contract without competitive bidding if the cost agreed upon in writing does not exceed ten percent of the original contract price.

Recommendation

Approval by the Board of Education of modifications in Board Policy 3311

Fiscal Impact

N/A

Attachments

- Board Policy 3311

In those circumstances where the law does not require competitive bidding, the Governing Board may request that a contract be competitively bid if the Board determines that it is in the best interest of the district to do so. If the Superintendent or designee determines that a Facilities or Buildings and Grounds contract involving an expenditure of more than the CUPCCAA bid threshold of \$175,000 (which amount may be adjusted from time to time) shall not be competitively bid, the Chief Operations Officer for the District shall provide the Board with a detailed rationale, including how the award without competitive bidding ensures that the District has secured the best terms at the best price.

Significant Exceptions to The Competitive Bidding Requirement

The following are several important statutory exceptions to the competitive bidding requirement. The following list is not intended to be exhaustive, and District Staff may recommend that the District procure services or goods not included on the list below that are exempt by other statutes from competitive bidding.

1. **CUPCCAA.** As noted above, the District is a **CUPCCAA**³ approved and certified school district. This means that construction contracts between \$45,000 and \$175,000 can be let using informal procedures.
2. **Professional Service Agreements** and contracts for materials, supplies, equipment and/or services costing less than the bid limit, which is \$87,800 (but increases a small amount on January 1 of each year), do not have to be formally bid. (Public Contract Code Section 20111(a)).
3. **Construction related Professional Services** such as Architects, Division of State Architects (DSA) Inspectors, Environmental Consultants and Construction Managers require a “fair, competitive selection process.”
4. **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources) are exempt from competitive bidding.
5. **Emergency** contracts do not need to be formally bid, but the Board must approve a resolution declaring the need for and Emergency Contract.
6. **Technology** contracts:
 - a. for electronic data-processing systems and supporting software equipment and/or services (including copiers/printers) over the \$87,800 bid limit (which is subject to annual adjustment), must be competitively advertised, but any one of the three lowest responsible bidders may be selected – Public Contract Code 20118.1;

³ The Uniform Public Construction Cost Accounting Act

- b. Contracts for Computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive bid process and the basis for award does not need to be the lowest price.
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10. **Perishable Food** contracts do not need to be competitively bid.
11. **Sole Source** contracts do not have to be competitively bid.
12. **Waste Management/ Recycling Services Contract.** Sections 40058 and 40059(a)(2) of the Public Resources Code provides that the District can contract with a "solid waste enterprise" for waste handling services and the District can determine, "[w]hether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding."
13. **Special Services** contracts for financial, economic, accounting, legal or administrative services; insurance services; waste management services do not have to be competitively bid.
14. **Change Order for Material and Supplies** (Pub. Cont. Code §§ 20118.4/20659.) Public Contract Code authorizes the change or alteration of an existing contract without competitive bidding if the cost agreed upon in writing does not exceed ten percent of the original contract price.
15. **Completion of Construction Contracts Upon Default of Contractor.** Where the governing board of a school district has reserved the right to complete a construction contract and deduct the amount expended from the agreed price of the contract should the contractor fail to carry out the work, a statute requiring competitive bidding does not apply.

Legal Reference:

EDUCATION CODE

- 17595 Purchases through Department of General Services
- 38083 Purchase of perishable foodstuffs and seasonable commodities
- 38110 Purchase of supplies through county superintendent
- 38111 Purchases by district governing board
- 38112 Purchases of necessary supplies
- 39802 Transportation bids and contracts for services

GOVERNMENT CODE

- 4330-4334 Preference of 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

- 2000-2001 Responsive bidders
- 3400 Bids, specifications by brand or trade name not permitted
- 3410 United States produce and processed foods
- 6610 Bid visits
- 12161 Definitions, recycled paper products
- 12168 Preference for purchase of recycled paper products
- 12169 Bidders to specify percentage of recycled paper product
- 12200 Definitions, recycled goods, materials and supplies
- 12210 Purchase of recycled products preferred
- 12213 Specification by bidder of recycled content
- 20103.8 Award of contracts
- 20107 Bidder's security
- 20111-20118.4 School districts
- 20189 Bidder's security, earthquake relief
- 22002 Definition of public project
- 22030-22045 Alternative procedures for public projects (CUPCCAA)
- 22050 Alternative emergency procedures

COURT DECISIONS

- 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

Management Resources:

WEB SITES

CSBA: www.csba.org

California Association of School Business Officials: www.casbo.org

7/14/04; revised 2/10/16, effective 7/1/2016



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.

Legislative File ID No. _____

Department: _____

Vendor Name: _____

Contract Term: Start Date: _____ End Date: _____

Annual Cost: \$ _____

Approved by: _____

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Summarize the services this Vendor will be providing.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

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OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 3311

Business and Noninstructional Operations

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Recommendation

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Fiscal Impact

N/A

Attachments

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- 39802 Transportation bids and contracts for services

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

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- 3400 Bids, specifications by brand or trade name not permitted
- 3410 United States produce and processed foods
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Management Resources:

WEB SITES

- CSBA: www.csba.org
- California Association of School Business Officials: www.casbo.org

7/14/04; revised 2/10/16, effective 7/1/2016



James Harris
President, Board of Education



Antwan Wilson
Secretary, Board of Education



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.

Legislative File ID No. _____

Department: _____

Vendor Name: _____

Contract Term: Start Date: _____ End Date: _____

Annual Cost: \$ _____

Approved by: _____

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Summarize the services this Vendor will be providing.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

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- Other, please provide specific exception**

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 3311

Business and Noninstructional Operations

Bids

The district shall purchase equipment, supplies and services using competitive bidding when required by law and in accordance with statutory requirements for bidding and bidding procedures. In those circumstances where the law does not require competitive bidding, the Governing Board may request that a contract be competitively bid if the Board determines that it is in the best interest of the district to do so.

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

To ensure that good value is received for funds expended, specifications shall be carefully designed and shall describe in detail the quality, delivery and service required.

To assist the district in determining whether bidders are responsible, the Board may require prequalification procedures as allowed by law and specified in Oakland Unified School District Policy.

(cf. 9270 - Conflict of Interest)

Legal Reference:

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