

MJUSD  
DIVISION 3000  
BUSINESS AND NONINSTRUCTIONAL OPERATIONS  
ADMINISTRATIVE REGULATION

## **BIDS**

**AR 3311(a)**

The District awards bids in accordance with the procedures set forth at Public Contract Code 20111 et seq.

The District has also adopted the California Uniform Public Construction Cost Accounting Act ("Act") procedures under Public Contract Code 22000 et seq.

### **Informal Bids**

Public projects, as defined by the Act and in accordance with the limits listed in Public Contract Code section 22032, may be let by contract by the informal procedures as set forth in Public Contract Code section 22032 et seq.

### **Contractors List**

A list of contractors shall be developed and maintained in accordance with the provisions of Public Contract Code section 22034 and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

### **Advertised Bids for Public Projects**

The District shall seek competitive bids through advertisement for contracts involving an expenditure greater than \$200,000 for a public project, may informally bid contracts involving an expenditure or less than \$200,000, and shall seek quotes, as needed, for projects involving an expenditure of \$60,000 or less.

"Public project" means construction, reconstruction, erection, alteration, renovation, improvement, painting, re-painting, demolition, and repair work involving a District-owned, District-leased, or District-operated facility. (Public Contract Code §§ 20111, 22002)

### **Advertised Bids for Equipment, Supplies, Services and Repairs Not Subject to the Act**

The District shall also seek competitive bids through advertisement for contracts exceeding the amount specified in law, and as annually adjusted by the Superintendent of Public Instruction, for any of 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.

"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 protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (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 (2) weeks 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, unless an alternate procedure is permitted by the Act. The Superintendent or designee also may post the notice on the District's website 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 prebid 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 (5) 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 sixty (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)
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 #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 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 supplies from being revealed to the District before the ranking of all bidders from lowest to highest has been determined. (Public Contract Code § 20103.8)

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7. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code section 20118.4.
8. After being opened, submitted bids become public records pursuant to Government Code section 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation. (*cf. 1340 - Access to District Records*)

## **Notice Requirements**

The call for bids and contract documents must include the following information:

1. No contractor or subcontractor may be listed on a bid proposal or awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
2. Public works projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## **Alternative Bid Procedures for Technological Supplies and Equipment**

Rather than seek competitive bids, the Board may use competitive negotiation when it makes a finding that a District procurement is for computers, software, and other related electronic equipment and apparatus. Competitive negotiation shall not be used to contract for construction. 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 ten (10) days before the date of receipt of the proposals.
3. The Superintendent or designee 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 Superintendent or designee shall provide reasonable procedures for the technical evaluation of the RFP's received, the identification of qualified sources, and the selection for the award of the contract.
6. The Board shall award the contract 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.
7. If the Board does not award the contract to the bidder whose proposal contains the lowest price, then the Board shall make a finding setting forth the basis for the award.
8. The Board, at its discretion, may reject all proposals and request new RFP's.
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.

## **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, 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) (*cf. 3300 – Expenditures and Purchases*)

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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)

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, needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code § 38083) (*cf. 3551 - Food Service Operations/ Cafeteria Fund*)

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 four-fifths vote, 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 § 22035) (*cf. 3517 - Facilities Inspection*) (*cf. 9323.3 - Actions by the Board*)

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)

Public projects of \$60,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order: (Public Contract Code § 22032)

1. School building repairs, alterations, additions.
2. Painting, repairing 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, either directly or indirectly, limits bidding to any one specific concern or calls for a designated material, product, thing, or service by a specific brand or trade name, unless the specification designating the specific materials, product, thing, or particular brand name is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In such cases, 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 thirty-five (35) days after the award of the contract. (Public Contract Code § 3400)

When the bid is for a roof project, a material, product, thing, or service is considered "equal" to the one 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)

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However, the Superintendent or designee may designate a specific concern, 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 that issued the invitation for bid or request for proposals

### **Prequalification Procedure**

Each prospective bidder may be requested to 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. 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, 20111.6)

Prospective bidders shall submit the questionnaire and financial statement at least five (5) days before the date fixed for public opening of sealed bids. (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)

### **Award of Contract**

Unless otherwise authorized by law, 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. Child nutrition program purchases shall have price as the primary consideration, but will also be able to consider factors other than price. (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 bidders. (Public Contract Code § 20118.1)

The Board shall secure bids pursuant to Public Contract Code sections 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 with 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 sections 20111 through 20111.4 for contracting after competitive bidding. (Public Contract Code § 20116)

**Protest by Bidders**

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy, the bid's specifications, or was not in compliance with law. The protest must comply with the following procedure unless an alternate procedure is specified in the bid documents, in which case that procedure shall be followed.

The protest shall be filed in writing with the Superintendent or designee within three (3) working days after notice 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 in a timely manner shall constitute a waiver of his/her rights to protest the award of the contract.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within fifteen (15) days. The Superintendent or designee also may 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 reasonable notice to the bidder of the time for Board consideration of the contract award. The Board's decision shall be final.

**Federal Funding**

For projects using federal funds, all purchases over \$10,000 must obtain at least two (2) written quotes.

*(2/19)*