

Update on Competitive Bidding Requirements

Like most public agencies in California, school districts are subject to competitive bidding laws when purchasing or leasing equipment, materials or supplies, or when contracting for services, repairs, or public projects. For all purposes, any purchase in violation of applicable bidding laws is illegal, void, and unenforceable. The basic competitive bidding rules appear at Public Contract Code Sections 20110-20118.4 for K-12 districts. Public Contract Code Section 20111 generally identifies three types of contracts:

- Contracts involving an expenditure of more than \$50,000 for lease or purchase of equipment, materials, or supplies, or for services or repairs that must be bid. (In addition, Public Contract Code Section 20 III provides for annual inflation indexing of the \$50,000 bid limit, which is now set at \$58,900);
 - Contracts for public projects involving an expenditure of more than \$15,000 that must be competitively bid; and
 - Contracts that do not have to be competitively bid, including those for professional services or advice, insurance services, other purchases or services exempt from Section 20111, and work done by day labor or force account in accordance with Section 20114. (However, all "architectural and engineering services"--defined in Government Code Section 4529.10 to include architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services--must be procured pursuant to a fair, competitive selection process per Government Code Section 4529.12.)
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- If a contract must be competitively bid, a number of rules apply, including the following:
 - The district must either award the contract to the lowest responsible bidder or reject all bids. (Public Contract Code Section 20 III)
 - For the purpose of securing bids, the district must publish a notice calling for bids at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county. (public Contract Code Section 20112)
 - The published notice must state the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. (Public Contract Code Section 20112)
 - As noted above, the district can only award a contract to a "responsible bidder", i.e., a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract. (Public Contract Code Section 1103) Before rejecting the lowest bid on the basis that the bidder is not "responsible", the district's legal counsel should be consulted to ensure that both substantive and procedural legal requirements are met.
 - The district must reject bids that are "non-responsive", i.e., bids that do not comply with all statutory requirements or do not substantially conform to the notice calling for bids and the specifications. However, the district may either waive minor and nonsubstantive irregularities that do not provide a competitive advantage or reject bids that do not conform completely to the notice calling for bids and the specifications. Before either rejecting the lowest bid on the basis that it is non-responsive or waiving any irregularities, the district's legal counsel should be consulted to ensure that both substantive and procedural legal requirements are met.

Against this somewhat settled backdrop, some legislative changes should be highlighted:

- AB 1506 (Wesson) (Stats. 2002, Chap. 868) requires an awarding body that chooses to use funds from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project to initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in Labor Code Section 1771.5(b) for that public works project. Construction contracts will need to be amended to reflect the additional requirements imposed on contractors under a labor compliance program. The new law provides that this new requirement applies to a public works project that commences on or after April 1, 2003. (C.A.S.H. will be holding a special Statewide Conference on December 5-6, 2002 covering AB 1506 and Proposition 47 Regulations.)
- SB 1687 (Margett) (Stats. 2002, Chap. 398) authorizes public agencies to adopt methods and procedures to receive bids on public works or other contracts over the Internet, but only if no bid can be opened before the bid deadline and all bids can be verified as authentic. (See also Civil Code Section 1633.1 *et seq.*, which covers "electronic transactions".)