

## HEBER ELEMENTARY SCHOOL DISTRICT

### **Board Policy No. 3005: COMPETITIVE BIDDING REQUIREMENTS**

#### **A. Competitive Bidding Requirements For Public Projects**

The District shall seek competitive bids through advertisement for contracts involving the expenditure of \$15,000, or more, for a public project. "Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and all repair work involving a District owned, leased or operated facility. A public project does not include maintenance work as defined in paragraph B.3 below. A "public project" means any of the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any District owned, leased or operated facility.
2. Painting or repainting of and District owned, leased or operated facility.

#### **B. Competitive Bidding Requirements For Other Than Public Projects**

Competitive bids and the award of a contract to the lowest responsible bidder shall be sought through advertisement for contracts exceeding \$50,000 as annually adjusted for inflation by the Superintendent of Public Instruction (effective January 1, 2023, the bid threshold was adjusted upward from \$99,100 to \$109,300), for the following:

1. The purchase of equipment, materials, or supplies to be furnished, sold or leased to the District
2. Services, except for construction services, professional services or advice, insurance services, or any other purchase or service exempt from Section 20111(c), or for any work done by day labor or by force account pursuant to Section 20114. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)
3. Repairs, including maintenance as defined in Public Contract Code section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

"Maintenance work" 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, minor painting, 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 equipment permanently attached to the building as realty or fixtures. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security guards or forces, nor does it include painting, repainting or decorating other than

touchup which are activities governed by § 20114 of the Public Contract Code.

C. Informal Bidding

Informal bidding may be used on work, projects, services, or purchases not up to the limitations described in paragraphs A and B above in the discretion of the Superintendent. For the purposes of securing informal bids, the Superintendent shall publish annually in a newspaper of general circulation published in the District or the County, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner the Superintendent deems appropriate.

D. Exception For Day Labor

Whenever the total number of hours on the job does not exceed 150 hours, day labor may be used to erect new buildings and for the following purposes:

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair of building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above

E. Bid Splitting

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. 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 20111-20116 for contracting after competitive bidding. The Superintendent shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

F. Emergencies

In an emergency when repairs, alterations, work or improvement to any school facility is necessary for the continuance of existing school classes or to avoid danger to life or property the Board, by unanimous vote and with the approval of the County Superintendent of Schools, may contract for labor and materials or supplies without advertising for or inviting bids.

#### G. Electronic Data Processing Systems And Software

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with anyone of the three lowest responsible bidders. If the Board determines that it is in the best interests of the District, the Board may authorize by contract, lease, requisition, or purchase order, and public corporation or agency, including any county, city, town, of district, to lease data processing equipment, purchase materials supplies, equipment, automotive vehicles, tractors and other personal property for the District in the manner authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the District may pay for the property including the reasonable costs for furnishing the services incidental to the lease or purchase of the personal property.

#### H. Alternative Procurement Methods for Technological Supplies and Equipment

Rather than seek competitive bids, the Board may use “competitive negotiation” in the award of contracts of contracts for technology, telecommunications, related equipment, software, and services. Competitive negotiation shall not be used to contract for construction or for the procurement of any product that is available in substantial quantities to the general public.

When the Board makes a finding that a procurement is for computers, software, telecommunications equipment, microwave equipment, or other related electronic equipment and apparatus, the District may consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, a broad range of competing products and materials available, fitness of purchase, manufacturer's warranties, and other similar factors.

Competitive negotiation includes, but is not limited to, all of the following requirements:

1. The District shall prepare a request for proposals that shall be submitted to an adequate number of qualified sources, as determined by the Superintendent, to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
3. The District 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 request for proposals is received.

4. The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.
5. The District shall provide reasonable procedures for the technical evaluation of the proposals 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 proposals.
9. Provisions in any contract concerning utilization of small business enterprises that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

I. Transportation Services

The Board shall secure bids 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 to other than the lowest bidder. (Education Code 39802)

J. Instructional Materials

The Board may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the District without taking estimates or advertising for bids.

K. Perishable commodities

Perishable commodities such as foodstuffs may be purchased through bid or on the open market at the discretion of the Superintendent.

L. Instructions and Procedures for Advertised Bids

1. The Superintendent or designee shall call for bids by advertising at least once a week for two weeks in a local newspaper or newspaper of general circulation circulated in the County of Imperial, and may post on the District's website, a

notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where and the website where bids will be opened. Whether or not the bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The Board may accept a bid that was submitted either electronically or on paper.

2. Bid instructions and specifications shall include the following requirements and information:
  - a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the products offered, and both the postconsumer and secondary waste content.
  - b. 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:
    - (1) Cash
    - (2) A cashier's check made payable to the District
    - (3) A certified check made payable to the District
    - (4) A bidder's bond executed by an admitted surety insurer and made payable to the District.
  - c. The security of unsuccessful bidders shall be returned in a reasonable period of time, in no event later than 60 days after the bid is awarded.
  - d. Under no condition shall bids be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time.
    - a. The Superintendent shall establish a procedure consistent with the requirements of this Board Policy which reasonably assures that potential bidders receive the same information regarding the specifications for bids and the procedures to be followed.
3. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted.
4. After being opened, all submitted bids shall be made available for review by all interested parties.

#### M. Sole Sourcing

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to anyone product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality and follow the description

with the words "or equal." Specifications for contracts may designate a product by brand or trade name (sole sourcing) when one or more of the following conditions in Public Contract Code section 3400 apply.

1. The product is designated to match others in use on a particular public improvement that has been completed or is in the course of completion.
2. One product has a unique application required to be used in the public interest.
3. Only one brand name is known.
4. Upon resolution of the Board, the Board makes a finding that the item sought is the subject of a field test to determine its suitability for future use.
5. In order to obtain a necessary item that is only available from one source.
6. In order to respond to an emergency declared by the Governing Board, but only if the declaration is approved by a four-fifths vote of the Governing Board.
7. In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the District's invitation for bid or request for proposals.

#### N. Prequalification Procedure

When required by law and/or the Board, for any contract for which bids are legally required, each prospective bidder shall complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent or designee shall supply a form which includes a complete statement of the bidder's financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at least five days before the date fixed for public opening of sealed bids. The information shall be verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

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.

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded.

A proposal form shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification, but did not do so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified for at least one day prior to that date.

O. Protests by Bidders

1. A bidder may protest a bid award if he/she believes that the award was inconsistent with Board Policy, the bid's specifications or not in compliance with law.
2. A protest must be filed in writing with the Superintendent or designee within five working days after receipt of notification of the contract award. The protesting bidder shall submit all documents supporting or justifying the protest and a specific statement as to the Board Policy, law or specifications violated. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract. If the bidder claims that a mistake has been made in his or her bid, notice of the mistake must be provided to the Superintendent within five calendar days after opening of the bids specifying in the notice in detail how the mistake occurred, how the mistake made the bid materially different than he or she intended it to be, and explain how the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans and specifications.
3. The Superintendent or designee shall review the documents submitted with the bidder's claim and render a decision in writing within 30 days. The Superintendent or designee also may convene a meeting with the bidder in order to attempt to resolve the problem.
4. The bidder may appeal the Superintendent or designee's decision to the Board within five (5) working days. The Superintendent or designee shall provide reasonable notice to the bidder of the time for Board consideration of the protest.

P. Contracts Awarded

Contracts awarded to the lowest responsible bidder shall include appropriate indemnification and insurance provisions for the benefit of the District.

Legal Reference:

Education Code section 39802

Public Contract Code sections 3400, 20107, 20110-20118.5, 22002

Date Policy Adopted By The Board: October 9, 2003

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