

# William S. Hart Union HSD

## Administrative Regulation

### Business and Noninstructional Operations

AR 3311

#### Bids

*The District has adopted the California Uniform Public Construction Cost Account 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 Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.*

#### *Contractors List:*

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

#### *Advertised Bids*

*The District shall seek competitive bids through advertisement for contracts involving an expenditure of greater than \$175,000 for a public project, informally bid contracts involving an expenditure of less than \$175,000, and seek quotes, when feasible, for projects involving an expenditure of \$45,000 or less.*

*"Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a District owned, leased or operated facility. (Public Contract Code 22002)*

*Competitive bids shall be sought through advertisement for contracts exceeding \$50,000, for the following: (Public Contract Code 20111; Government Code 53060) The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the superintendent of public instruction.*

*The purchase of equipment, material or supplies to be furnished, sold or leased to the District.*

- 1. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters.*
- 2. 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)

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. (Public Contract Code 20111)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Governing Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

The Governing Board shall secure bids pursuant to Public Contract Code 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 Governing Board may let this contract to 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 20111- 20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

#### Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the District, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (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 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. Recycled content and recycled products (Public Contract Code 22150 et seq.)
  - a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.
  - b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.
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, in no event any later than 60 days after the bid is awarded. (Public Contract Code 20111)

- 3. 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)
- 4. When two or more identical lowest or highest bids are received, the Governing Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)
- 5. 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, depending on the availability of funds, 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 taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.
  - d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.
- 6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.
- 7. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Governing Board policy, and administrative regulation.

(cf. 1340 Access District Record)

Upon a determination that it is in the best interest of the District, the Governing Board may authorize the purchase, lease or contract for data-processing equipment, purchase

materials, supplies, equipment, automotive vehicles, tractors and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

(cf. 3310 - Purchasing Procedures)

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)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

In cases of emergency when repair or replacements are necessary, the Governing Board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the Governing Board, by contractor, or by a combination of the two.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050).

(PCC 22035)

In cases of emergency when repair or replacements are necessary, the Governing Board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the Governing Board, by contractor, or by a combination of the two.

By a four-fifths vote of the Governing Board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By a four-fifths vote of the Governing Board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the Governing Board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed). Code is in conflict with boards that meet on a monthly basis.

(PCC 22050)

(cf. 9323.2 - Actions by the Board)

Bids shall also not be required for day labor under circumstances specified in law. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects of \$45,000 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, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined
6. Sole sourcing brand names

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to any one product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality or utility and follow the description with the words "or equal." (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name when one or more of the following conditions apply: (Public Contract Code 3400)

1. In order that a field test or experiment may be made to determine the product's suitability for future use.
2. In order to match other products in use on a particular public improvement either completed or in the course of completion.
3. In order to obtain a necessary item that is only available from one source.
4. (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the Governing Board of the local agency issuing the invitation for bid or request for proposals. (B) 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 public records of the authority issuing the invitation for bid or request for proposals.

If the District specifies a brand name for a designated material, product, thing, or service by the specification shall be followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the District shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any

time within 35 days after the award of the contract.

### Prequalification Procedure

For any contract for which bids are legally required, the Governing Board may require that each prospective bidder 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. 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 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) 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)

For any contract awarded after January 1, 2014, using funds from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond if the project has projected expenditures of one million dollars or more, the District must prequalify all bidders. (Public Contract Code 20111.6) The District shall comply with all requirements of the PCC 20111.6 until its expiration on January 1, 2019.

### Appeal Procedures

Contractors will be allowed to appeal a negative pre-qualification determination in accordance with California Public Contract Code §20101.d. There is no appeal from a refusal for an incomplete or late application. Without a timely appeal, the contractor waives any and all rights to challenge the decision of the District, whether by administrative process, judicial process or any other legal process or proceeding.

In conjunction with this pre-qualification policy, the District hereby establishes a bidder pre-qualification appeals panel ("appeals panel"), consisting of the following two members, or their designee(s):

Chief Administrative Officer  
Director of Purchasing

The sole issue before the appeals panel shall be the scoring of a contractor. The decision of the appeals panel shall be the District's final administrative decision.

The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process.

### Process:

- 1) Prior to disqualifying a contractor, the District shall serve written notice on the contractor:
  - a. Setting forth the reasons for the disqualification.
  - b. Indicating that the contractor will be afforded an opportunity to appeal the

disqualification as outlined below. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the contractor, or the contractor's agent for service of process, or any of its principal officers, partners, owners or affiliated.

2) The contractor shall submit his appeal in writing with the Chief Administrative Officer no later than 4:00 p.m. of the FIFTH business day following the day on which the notice of rejection was mailed to the contractor.

3) The District shall act upon properly filed requests within ten calendar days from the date of receipt of such request. If, after review, the District again rejects the contractor's application, the contractor may request an administrative hearing with the panel.

4) At the hearing, the contractor may present oral testimony concerning the contractor's capability and responsibility. The District shall notify the contractor of his decision within five business days following the hearing. The decision of the panel is final.

5) A contractor, who is denied prequalification, shall be disqualified in the same type of work or category of value for a period of one year thereafter.

#### Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

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 bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.

Any bidder submitting a bid proposal may file a protest of the District's intent to award the contract provided that each and all of the following conditions are met:

1. The protest must be submitted in writing to the District (e-mail is not acceptable), before 4:00 p.m. of the FIFTH business day following bid opening.

2. The initial protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence

3. The protest must refer to the specific portions of all documents which form the bases for the protest.

4. The protest must include the name, address and telephone number of the person representing the protesting party.

5. Any bid protest not conforming to the foregoing shall be rejected by the District as

invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Chief Administrative Officer, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Chief Administrative Officer or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Governing Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid award as reflected in the written statement of the Chief Administrative Officer or his/her designee. Action by the District's Governing Board relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Governing Board. The rendition of a written statement by the Chief Administrative Officer (or his/her designee) and action by the District's Governing Board to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the contract, the District's disposition of any bid protest or the District's decision to reject all bid proposals.

6. The procedure and time limits set forth in this paragraph are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

Regulation

Approved: 8/11/1993 WILLIAM S. HART UNION HIGH SCHOOL DISTRICT, SANTA CLARITA, CA

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