

Professional Services

Government Code §4525 et seq. governs the procurement of professional services (private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms). Under its provisions, school districts are afforded the freedom to develop individual procurement procedures for professional services provided that they assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices, and prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract. School districts should ensure that these requirements are always met by clearly defining professional services procurement procedures in formal board policies.

Rejection of All Bids

School districts should avoid issuing a request for proposal/qualifications if it is not the ultimate intention of the district to award a contract. Should the district wish to reject all bids received, the district should notify all bidders of its specific rationale. Such a policy will provide several benefits including increased district transparency, reduced likelihood of future litigation, and a potential incentive for increased participation by contractors in future competitive bidding.

Lease-Leaseback

Procurement of Lease-Leaseback (LLB) services is more susceptible to questionable practices than procurement of other construction or professional services as no legal requirements currently exist for advertisement of potential contracting opportunities or evaluation of potential contractors via a standardized process. For this reason, it is recommend that school districts institute several provisions to ensure fair and open procurement of lease-leaseback services:

- A. Districts should not look to LLB as a perfect project-delivery method that produces optimal results in all circumstances. Rather districts should develop board policies for evaluating projects on a case-by-case basis.
- B. Districts should establish board policies regarding procedures for procurement and execution of LLB agreements.
- C. Districts should fully evaluate the knowledge and experience of current staff to ensure that proper capacity exists to effectively carry out an LLB agreement.
- D. LLB agreements should be procured through a best-value competitive process.
- E. Potential contractors should be evaluated using predetermined and publicly available criteria.
- F. Potential contractors should be evaluated by a selection panel consisting of both district staff and outside parties knowledgeable in public works contracting and/or construction.

- D. Description of how bidders will be evaluated and how the final contract award determination will be made.
- E. Description of any district contracting preferences or requirements, such as prevailing wage requirements, preference for small, local, or minority-owned businesses, and bonding requirements.

Standardizing Scoring System

For any evaluation of potential contractors according to non-price criteria, a standardized scoring system should be used in conjunction with predetermined evaluation criteria. A standardized scoring system will eliminate the potential for subjective or bias interpretation of evaluation criteria by various district staff or officials throughout the procurement process. The scoring system should identify how each evaluation criteria will be measured and the relative significance or weight that will be assigned to each criterion. A description of the scoring system should be made publicly available and included in all solicitation documents.

Selection Panel

A committee or panel comprised of district staff and a member(s) of another school district or other outside expert(s) in public works contracting should be used in all circumstances in which a potential contractor is evaluated according to non-price criteria, including best value procurement, contractor prequalification, and professional services procurement. Use of a selection committee introduces an objective outside opinion into the selection process and assures that contractors will be evaluated fairly.

Accountability/Transparency

Notice of Intent to Award

After a district has made a final contract award determination but prior to the actual awarding of the contract, the district should send a notice of intent to award to all bidders informing them which contractor(s) the district has selected. This notice serves as an indication to unsuccessful bidders that they may apply for post-award debriefing and/or file a bid protest with the district.

Bid Protest/Contract Award Appeals Procedure

Any unsuccessful bidder should be given the opportunity to challenge a district's contract award if they believe that the award is inconsistent with board policies, the bid's specifications, or local, state, or federal law. The opportunity to challenge a district's award should not be limited to contracts awarded through traditional competitive bidding, but also applicable to professional services contracts, design-build contracts, and lease-leaseback contracts. However, for contracts awarded based on non-price evaluation criteria, such as professional services contracts, design-build contracts, and lease-leaseback contracts, unsuccessful bidders should not be allowed to appeal specific district interpretation or application of evaluation criteria but should be limited to a challenge based on non-compliance with board policies and local, state, or federal laws. If award challenges are reviewed by district staff, a procedure should be established that allows a contractor to appeal the determination of a staff member to the board. Districts should establish a deadline for receipt of bid protests. However they should also develop a provision allowing for the extension of the deadline if an outstanding public-record request has been submitted to the district by the protesting bidder. Bid protest procedures should be described in both written board policies and all solicitation documents.

Attachment 1

Fair and Open Competition

The district and/or public entity will promote fair and open competition for all district and/or public entity construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of district and/or public entity construction contracts.

The district, prior to any discussion and/or vote of a resolution to negotiate a project labor agreement, shall inform district taxpayers 90 days in advance, via public notice, of any board discussion and/or vote.

ATTACHMENT 3

Federal Acquisition Regulation 15.506

(a)(1) An offeror, upon its written request received by the agency within three days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request. Offerors that requested a post award debriefing in lieu of a pre-award debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505

(a)(2), or any untimely debriefing request, does not automatically extend the deadlines

for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could a-5.94.coia.o10 (a)-10 10 (.) (omT

ATTACHMENT 4

(3) Introduction as a lead author of any legislation that the member knows or has reason to know is non-general legislation.

(4) Any vote in a legislative committee or subcommittee on what the member knows or has reason to know is non-general legislation.

(5) Any roll call vote on the Senate or Assembly floor on an item which the member knows is non-general legislation.

(6) Any action or decision before the Legislature in which all of the following occur:

(A) The member has received any salary, wages, commissions, or similar earned income within the preceding 12 months from a lobbyist employer.

(B) The member knows or has reason to know the action or decision will have a direct and significant financial impact on the lobbyist employer.

(C) The action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(7) Any action or decision before the Legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

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87102.6. (a) "Non-general legislation" means legislation as to which both of the following apply:

(1) It is reasonably foreseeable that the legislation will have direct and significant financial impact on one or more identifiable persons, or one or more identifiable pieces of real property.

(2) It is not reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public.

(b) For purposes of this section and Section 87102.5, all of the following apply: (1) "Legislation" means a bill, resolution, or constitutional amendment.

(2) "Public generally" includes an industry, trade, or profession.

(3) Any recognized subgroup or specialty of the industry, trade, or profession constitutes a significant segment of the public.

(4) A legislative district, county, city, or special district constitutes a significant segment of the public.

(5) More than a small number of persons or pieces of real property is a significant segment of the public.

(6) Legislation, administrative action, or other governmental action impacts in a similar manner all members of the public, or all members of a significant segment of the public, on which it has a direct financial effect, whether or not the financial effect on individual members of the public or the significant segment of the public is the same as the impact on the other members of the public or the significant segment of the public.

(7) The Budget Bill as a whole is not non-general legislation.

(8) Legislation that contains at least one provision that constitutes non-general legislation is non-general legislation, even if the legislation also contains other provisions that are general and do not constitute non-General legislation.

87102.8. (a) No elected state officer, as defined in subdivision (f) of Section 14 of Article V of the California Constitution, shall make or participate in the making of, or use his or her official position to influence, any governmental decision before the agency in which the elected state officer serves, where he or she knows or has reason to know that he or she has a financial interest.

(b) An elected state officer knows or has reason to know that he or she has a financial interest in any action by, or a decision before the agency in which he or she serves where either of the following occur:

(1) The action or decision will have a direct and significant financial impact on a lobbyist employer from which the officer has received any salary, wages, commissions, or similar earned income within the preceding 12 months and the action or decision will not have an impact on the public generally or a significant segments(i)6a114 0 a2.9 10 ()-10 (oc)4 (c)4 (u

87104. (a) No public official of a state agency shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or any oral or written communication to, his or her state agency or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, "public official" includes a member, officer, employee, or consultant of an advisory body to a state agency, whether the advisory body is created by statute or otherwise, except when the public official is representing his or her employing state, local, or federal agency in an appearance before, or communication to, the advisory body.

87105. (a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

(1) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

(4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.