

BIDDING & CONTRACTING

SAN DIEGO COUNTY OFFICE OF EDUCATION
April 28, 2017

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Objective

- Construction Delivery Methods
- Bidding Requirements
 - *RFPs for Professional Services*
 - *Informal Bidding*
 - *Formal Bidding*
 - *The Bid Process*
 - *Bid Documents*
- Basic Contract Law
 - *Bid Review & Award*
 - *Responsive / Responsible*
 - *Protest Process*
 - *Governing Board Approval*
 - *Delegation of Authority*
 - *Void Contracts*
- Organization Best Practices
 - *Establishing Written Procedures*
 - *Scheduling*
 - *Responsibilities of Each Department*



CONSTRUCTION DELIVERY METHODS



Determine Project Delivery Method

- Design Build
- Lease-Leaseback
- Multiple-Prime
- Design – Bid – Build (Traditional Method)



Design Build

- Authority
 - *School Districts have potential ability to use Design-Build per Ed. Code §17250.10 et seq. and Govt. Code § 4217 for projects in excess of \$1 million.*
- Requirements
 - Competitive Proposal
 - Prequalification
 - Skilled Workforce

Lease-Leaseback

- Authority:
 - *Education Code 17406 authorizes school districts to lease out property for a minimum of \$1 per year for purposes of constructing facilities,*
- Requirements
 - Competitive Proposal
 - Prequalification
 - Skilled Workforce

CM – Multiple Prime

- Authority:
 - *CM – Multiple Prime is a variation of the traditional design-bid-build method that began in the 1960s in order to reduce construction costs*

- Requirements
 - Competitive Proposal for the Construction Manager
 - Good Contract Management
 - Organized Bidding Process

**CALIFORNIA UNIFORM
PUBLIC CONSTRUCTION
COST ACCOUNTING ACT**



Alternative Bid Limits

- Enacted in 1983 under Public Contract Code section 22000 et seq.
- Allows local agencies to perform public project work of up to \$45,000 with their own workforces (**Force Account**) if the agencies elect to follow the cost accounting procedures set forth in the *Cost Accounting Policies and Procedures Manual of the California Uniform Construction Cost Accounting Commission*
- Public projects of \$45,000 or less may be performed by negotiated contract, or by purchase order.
- Public projects between \$45,000 and \$175,000 may be let to contract by informal procedures as set forth in the Act.
- Public projects of more than \$175,000 shall, except as otherwise provided in the Act, be let to contract by formal bidding procedure.

Implementation of CUPCCAA

- Governing Board approves resolution to become subject to CUPCCAA procedures.
- District files resolution with Controller.
- Entire District becomes subject to the Act.
- Board enacts informal bidding regulations under PCC § 22034 establishing list of contractors to be notified of potential projects and procedures for informal bidding.
- Works best if district adopts delegation of authority.
- Board approval of emergency procedures is recommended.

BIDDING REQUIREMENTS AND BID DOCUMENTS



Professional Services

- Requests for Proposal
 - *GC 53060: Competitive Bidding not Required*
 - Professional Services
 - *GC 4525 through 4529.5.*
 - Contracts for architects, landscape architecture, engineering, environmental, land surveying and construction project management services require a competitive process based on competence and qualifications.
 - Strict requirement when using State Bond Funds



Public Works

- PCC 20111
 - \$15,000
- CUPCCAA
 - *Alternative Bid Limits*
 - *Quotes (if required by district policy)*
 - *Informal Bids: \$45,001 - \$175,000*
 - *Formal Bids: >\$175,000*

The Bid Process

- Driven by Delivery Method and/or Funding Source
 - *Prequalification, DVBE, Basis of Award?*
- Advertising (Notice Inviting Bids) Timeline
- Addenda: Timeline and Materiality
- Prebid Conference
- Submission of Bids
- Opening Bids
 - *What to read aloud*
 - *Review of bids by bidders*
- Bid Mistakes / Withdrawal of Bid
- Alternates
- Bonds (What is covered?)
- Labor Compliance



Public Works – Additional Considerations

- Unit Price Bids vs. JOC
 - *AB 1431 – Job Order Contracting*
 - Adoption of PLA is required.
- Project Labor Agreements
- Stop Payment Notices
 - *Retention requirement.*
- Disputed Work

Bid Documents

- Legal Review

- *All bid documents should be up to date with current legal requirements*
- *Person responsible for bidding should remain informed of legislative changes (usually effective January or July 1)*

Bid Document Contents

- Notice to Bidders
- Information for Bidders (Bidding Rules and Process)
- Bid Form
- Subcontractor Listing
- DIR Certification (SB 854)
- Agreement
- Bond Forms
- General Conditions
- Special Condition
- Specifications
- Escrow Agreement
- Certifications
- DVBE (if applicable)

BASIC CONTRACT LAW



Award of Contracts

- Determination of Responsive/Responsible Low Bidder
- Subletting and Subcontracting Fair Practices Act
- Protests
- Governing Board Approval of Contract
 - *Execution of Contract & Notice to Proceed)*
- Void Contract Rule



Responsive / Responsible

- Responsive: Contractor has completed the bid documents accurately and completely.
 - *Bid is timely, subcontractor's list submitted, bid bond is included, bid is signed, etc.*
 - *District retains the right to waive minor irregularities.*
- Responsible: Contractor is qualified to do the work.
 - *District must hold a hearing if a contractor is found to be not responsible.*
 - *A not responsible determination must be based on fact.*
 - *A finding of not responsible may be fatal to a contractor.*
 - *Prequalification for complex projects may eliminate unqualified bidders.*

Subletting & Subcontracting

- Subcontractor Listing
 - *List all subcontractors performing more than one-half of one percent of the total contract work*
 - *Include the name, location, and portion of work to be done by each listed subcontractor*
 - *Perform all portions of work in excess of one-half of one percent for which the contractor fails to list a subcontractor*
- Substitution of Subcontractors
- May not be Cause for Denial of Bid

Protest Process

- Requirements for Submitting a Protest
- Notification of Contractor
 - *Reasonable time to respond*
- Hearing
- District's Written Decision
- Board Approval (at time of award)
- Lawsuit?

Governing Board Approval

- The power to award a contract at or above the bid limit remains solely with the Governing Board (EC 17605 – CUPCCAA, PCC 22034).
 - *No rule shall authorize any officer or employee to make any purchases involving an expenditure by the district in excess of the amount specified by Section 20111 of the Public Contract Code.*
 - *The Governing Board may delegate authority to award informal contracts up to \$175,000.*
 - *Contracts executed under delegation of authority must be ratified within 60 days (EC 17605)*
- Must precede the Notice to Proceed

Void Contracts

- Contracts may be unenforceable.
 - *The California Constitution denies a public entity the power to make any payments on a contract not authorized by law*
 - *A mis-awarded public works contract is not a legal contract*
 - *Public Contract Code section 5110 provides some relief to the contractor if the public agency was solely responsible for the defects in the procurement process*
- Payment cannot be legally processed.
- Contractor's responsibility to know the rules of contracting.
- Individual signing agreement without authorization may be held personally liable.

PREQUALIFICATION OF BIDDERS



Voluntary Prequalification

- Districts may choose to use a prequalification process. (PCC 20111.5 and 20101)
 - *Standard questionnaire based on the DIR model.*
 - *Financial statements must be submitted by contractor.*
 - *District must adopt a uniform system of rating of bidders.*
 - *May conduct the process on a quarterly basis.*
 - *Rating is valid for one calendar year.*
 - *District must notify the contractor of the rating in writing.*
 - *District must establish an appeals process.*
 - *The questionnaire and financial statements are NOT subject to the Public Records Act. (The names of contractors are public record.)*



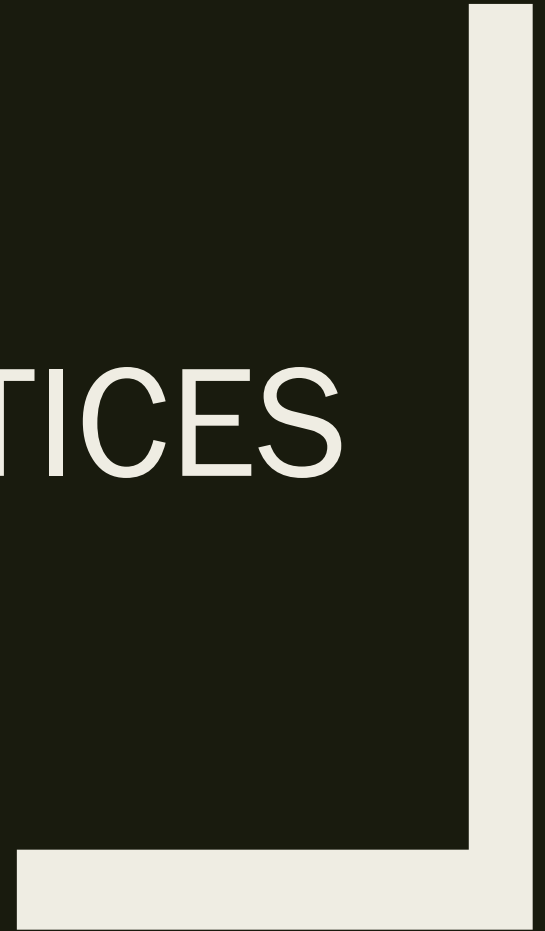
Mandatory Prequalification

- Districts may choose to use a prequalification process. (PCC 20111.6)
 - *Required when using State Facility Bond funds and the project is valued at \$1 million or more.*
 - *Requires prequalification of general contractors and all electrical, mechanical, and plumbing contractors.*
 - *Standard questionnaire based on the DIR model.*
 - *Financial statements must be submitted by contractor.*
 - *District must adopt a uniform system of rating of bidders.*
 - *May conduct the process on a quarterly basis or annual basis.*
 - *Rating is valid for one calendar year.*
 - *District must notify the contractor of the rating in writing.*
 - *District must establish an appeals process.*
 - *The questionnaire and financial statements are NOT subject to the Public Records Act. (The names of contractors are public record.)*

Prequalification on Best Value Contractors

- Prequalification is required on public works contracts let under a Request for Qualifications / Proposal process:
 - *Design Build*
 - *Lease-Leaseback*

BEST PRACTICES



Written Procedures

- Update Board Policies and Administrative Regulations
- Develop communication tools:
 - *Weekly meeting with entire team.*
 - *Create written procedures for the handling of processes related to public works:*
 - Contracts up to \$45,000
 - *When is quoting required by district policy?*
 - Informal Bid Process
 - Formal Bid Process
 - Change Orders
 - Stop Payment Notices
 - Filing of Notice of Completion



Written Procedures (cont'd)

- Board Award
 - *Contract Listing*
 - *Change Order Listing*
- Project Closeout
- Records Retention
- Public Records Act

Scheduling of Bids

- Things to consider:
 - *Is prequalification required?*
 - *Complexity of Project*
 - *Mandatory Prebid (is more than one favorable)*
 - *Advertisement (Is one enough?)*
 - *Time to respond to Requests for Information*
 - *Time to issue proper addenda*
 - *Substitution Requests*
 - *Board Award Date*
 - *Execution of Contract Documents*
 - *Desired Start Date*
 - *Time to rebid if necessary*

Responsibilities

- Who will do what?
 - *Provide specifications*
 - *Compile bid documents and handle bidding process*
 - *Ensure board approval of contract, change orders, and NOC*
 - *Review substitution of subcontractors*
 - *Handle Stop Payment Notices and notification to requesters that pay to be notified of NOC filing date*
 - *Handle bid protests*
 - *Serve on hearing panels for protests and prequalification*
 - *File PWC 100*
 - *Ensure DSA closeout*

Questions?

THANK YOU!