

## **CHAPTER 5 – FORMAL COMPETITION**

Formal competition is required by law for the procurement of supplies, equipment and general services pursuant to Public Contract Code §20111. The intent of the law is to ensure a fair and open competitive process for bidders, so that governmental agencies get the best value for our dollars.

Therefore, it is District policy to require formal competition for supplies, equipment and general services in amounts above the State mandated threshold. Professional service contracts are not required by law to be competed. However, the Board has adopted a policy for competitive negotiation for professional services. It is District policy to require formal competition for professional services at the threshold of above \$250,000. Competition is a method to promote fairness, obtain competitive prices, and minimize opportunities for fraud, deceit and corruption. The dollar thresholds previously discussed indicate when competition is required. Formal competition is conducted by PSD staff and cannot be conducted by staff at the school/office.

Federally funded projects are required to be procured by competitive selection (34 CFR 80.36). It is required that competitive solicitation be publicized and identify all evaluation factors and their relative importance, solicitation from an adequate number of qualified sources, and conduct technical evaluations.

### **A. PURPOSE AND INTENT OF COMPETITIVE PROCESS**

The purpose and intent of competition is to:

- safeguard public funds
- provide efficiency and effectiveness in selecting commodities, goods and services
- establish public confidence that Procurement is ethical and prudent
- ensure fair and open competition among contractors/vendors

### **B. SPLITTING TO AVOID COMPETITION (DD-10)**

It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the competitive process (Public Contract Code §20116). No person shall willfully split a single transaction into a series of transactions for the purpose of evading the requirements (Public Contract Code §20116). Moreover, it is against Board policy to split professional service contracts to avoid the competitive negotiation requirement.

#### **DD-10 Bid Splitting**

**DO recognize that according to the California Public Contract Code, “It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.”**

**DON’T issue multiple contract requests (or low-value Purchase Orders) for smaller sections of your total requirement to avoid going thru the competitive process, or to avoid obtaining the required District or Board approvals.**

## **C. INFORMAL COMPETITION**

### **C.1. Streamlined Strategically Sourced Request for Proposal**

In an informal RFP, it is neither necessary to advertise the RFP nor have a formal evaluation committee or negotiation unless greater than \$250,000 or otherwise deemed appropriate. Although the formal RFP steps are not required, evaluation of the proposals is conducted by the school or office.

## **D. SOLE SOURCE/SINGLE SOURCE**

### **D.1. Sole Source**

Sole source is a non-competitive purchase or procurement process accomplished with only one source, thus limiting full and open competition. The Board of Education and Procurement Services Division policies limit the use of the single source and/or sole source purchases. Every effort must be taken by schools and offices to solicit competition when procuring for goods and services. Schools must obtain prior approval from the Instructional Area Superintendent of their Local District on the applicable justification memorandum to submit a Sole Source contract request. Offices must obtain prior senior staff approval on the applicable justification memorandum to submit a Sole Source contract request.

In cases where PSD and the School/Office agree via justification that an article of a specified brand or trade name is the only article that will properly meet the needs of the District, competition is exempt. Specifications for commodities, goods or services may designate a product by brand or trade name when one or more of the following conditions apply:

- The product is designated to match others in use on a particular District improvement that has been completed or is in the course of completion.
- One product has a unique application required to be used in the District's interest.
- Only one brand or trade name is known (for example, patented technology).
- 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.

(Public Contract Code §3400)

#### **D.1.a. Difference between Sole Source and Single Source**

What is Sole Source?	Specific products or services available from one and only one source, also called sole source, sole provider, sole supplier, sole vendor, or sole distributor. The product or service must be so unique and innovative to reasonably conclude that, if the requirement were to be openly competed, the requirement could be satisfied by one and only one source.
What is Single Source?	A single source is a source specifically selected amongst others, if any, due to specific reasons, i.e. availability, capacity, location, replacement parts, compatibility, quality, service, support, etc.

### **D.1.b. Sole Source Evaluation Factors**

Sole source solicitation constitutes a violation unless it is justified by one of the seven circumstances listed below:

1. Only one responsible source and no other supplies or services will satisfy agency requirements;

Must also meet the following sub-requirements:

- a. uniqueness, i.e. the item is only available from one single supplier (one-of-a-kind, parts maintenance, compatibility, standard compliance, patent, trade secret, copyright); or
  - b. immediacy, i.e. delivery date or delays resulting from competitive solicitation are not acceptable; or
  - c. emergency, i.e. delays resulting from other methods of solicitation are not bearable; or
  - d. legitimacy, i.e. specific contexts (geographic, contractual, political, legal, military, security, etc.) may allow such a non-competition of sources; or
  - e. inadequacy, all sources are qualified as inadequate (compatibility, compliance, price, quality, service, support, etc.); or
  - f. exigency, i.e. any other specific reason dictating the choice of a given provider.
2. Unusual and compelling urgency;
  3. Industrial mobilization; engineering, developmental, or research capability; or expert services;
  4. International agreement;
  5. Authorized or required by statute or grant;
  6. National security; and
  7. Public interest.

### **D.1.c. Inappropriate Sole Source Justification**

Sole sourcing is not appropriately justified when used as a method of selecting a preferred vendor. Past performance alone is not an acceptable sole source justification. Notwithstanding the fact that they could be voided by potential sole source solicitation protests, purchases of this kind, when put under scrutiny, will surely attract auditors' interest in their quest for details suggesting a bit of favoritism, partiality, and other bias.

### **D.2. Single Source**

In cases where PSD and the School/Office agree via justification that only a single vendor will properly meet the needs of the District, competition is exempt. Schools must obtain prior approval from their Local District Superintendent on the applicable justification memorandum to submit a Single Source contract request. Offices must obtain prior senior staff approval on the applicable justification memorandum to submit a Single Source contract request. The Board of Education and Procurement Services Division policies limit the use of the single source and/or sole source purchases. Every effort must be taken by schools and offices to solicit competition when procuring for goods and services.

Single source procurement is one in which multiple sources are available but the item(s) or service must be purchased from a specific vendor for a specific reason. Such reasons would include, but are not limited to:

- Service issue;
- Location;
- Availability;
- Capacity;
- District or school emergency; and/or
- State or grant mandated provider

### **D.2.a. Justification**

The following questions must be answered and must be provided to PSD by you (School/Office):

- Why is this necessary?  
Explain why this service is required.
- Why is this firm selected?  
Do we have prior experience with the vendor that this procurement will build upon? Is the service to be provided unique or proprietary in nature? Please include whether the firm is a small business and/or its employees belong to a union. If grant-named vendor, indicate.
- Explain why this contract could not be competitively bid.  
Describe why this contract request could not undergo the normal competitive bid process required by the Board.
- How was a fair price established?  
Provide details and supporting documentation about the firm's competitors and pricing; how this is a best value for the District.
- What would happen if this were not approved?  
Clarify ramifications of taking action versus not taking actions; including delay for competitive procurement.
- What are the terms of the proposed agreement?  
Identify terms of any proposed agreement, including the funding sources. Identify any savings over the previous year, "green" initiatives.

### **D.3. Textbooks and Prepared Instructional Materials**

The District may purchase basic textbooks, 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 District without taking estimates or advertising for bids (Public Contract Code §20118.3).

## **E. HOW TO START THE CONTRACTING PROCESS**

Schools/offices must complete the RFPA and submit it to PSD. PSD will review the RFPA and attached supporting documentation and determine whether competition is required. Therefore, it is critical that the School/Office provide a clear, concise and detailed statement of work or specification.

Federally funded procurements require a cost or price analysis in connection with every procurement action including contract modifications. (34 CFR 80.36) Similarly, non-federally funded contracts, including state-funded contracts, also include cost or price analysis as a best practice.

## **F. CONE OF SILENCE**

Upon completion of the IFB or RFP, it will be released to the general public. It is District policy that once the solicitation is released, a “Cone of Silence” is applied. This means that any lobbying or marketing activities to District Officials by a particular bidder or its representatives must cease from the moment the solicitation is released until the time the Board Report for the final contract is posted. (See the District’s Contractor Code of Conduct or Lobbying Disclosure Code at [www.lausd.net/ethics](http://www.lausd.net/ethics) if you need further information.)

## **G. UNSOLICITED PROPOSALS**

If you are approached by a vendor with a proposal for professional services, general services or goods, refer them to the Procurement Services and Contract Administration Branch.

It is the policy of the District to encourage the submission of new and innovative ideas. These ideas may be submitted as unsolicited proposals. Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the District to be made available to the District for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the District will enter into a contract with the offeror for research and development or other efforts supporting the District’s mission, and often represent a substantial investment of time and effort by the offeror.

Unsolicited proposals may come forth when companies see an opportunity to use the District to enhance their business interest. It may appear from such proposals that no other company could offer the same product or service. However, this does not justify a sole source contract. If the idea or activity is of interest to a department, the concept should be evaluated on its own merit. If the decision is to implement it, then a competitive process should be used to select the contractor, unless it is determined that the proposed concept itself is proprietary.