



Board Policy

Bidding for Public Works Contracts

Purpose:

It is the intent of the Board of Directors (“Board”) of the District (“District”) to provide an equal opportunity to all qualified and responsible parties wishing to participate in the bidding process with respect to the public works projects undertaken by the District. Consistent with the District’s obligations, the Board desires to obtain the best value for all expenditures.

Health and Safety Code § 32132 requires healthcare districts to award to the lowest responsible bidder any contract up to established expenditure limits involving (i) materials and supplies furnished to the district and (ii) work to be done for the district.

Section 1. General Principle of the Bidding Policy.

1.1 Policy of the Board. As a general statement of policy, the Board declares that it shall endeavor to obtain the maximum value for all monies expended, consistent with the District’s responsibility to provide the best health care to its residents.

Section 2. Lowest Bid Policy.

2.1 Definitions.

a. For purposes of this Memo, “Work” is defined as work relating to projects involving construction or improvement of a District facility (i.e. public works projects), but excluding routine or recurring maintenance. “Work” shall not include procurement of medical equipment and supplies or electronic equipment.

b. For purposes of this policy, “responsible bidder” means a bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity, and experience to perform the contract satisfactorily. (Public Contract Code § 1103.)

Adopted: April 24, 2014

Procedure:

2.2 Application of Policy.

a. The Board of Directors shall award any contract for Work exceeding twenty-five thousand dollars (\$25,000) to the lowest responsible bidder who shall give such security as the Board requires, or the Board shall reject all bids. (See Health and Safety Code § 32132.) Unless all bids are rejected, the Board shall authorize the District's Chief Executive Officer ("CEO") to enter into an agreement with the lowest responsible bidder for the Work.

b. The Board shall award contracts for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction management firms as provided in Section 5 of this Policy.

2.3 Exemptions to the Lowest Bid Policy. Subject to the provisions of this Section, the District shall not be required to apply the lowest bid policy to (a) emergency contracts, (b) change orders, (c) energy services contracts, (d) public works project where the District has elected to follow the alternative statutory procedures, or (e) professional services.

a. The District shall not be required to secure bids for emergency contracts. Notwithstanding anything to the contrary, the Board may award contracts for Work without following the lowest bid policy, if it first determines (i) an emergency exists that warrants such expenditure due to fire, flood, storm, epidemic or other disaster, and (ii) it is necessary to protect public health, safety, welfare or property. (See Health and Safety Code § 32136.)

b. The District shall not be required to secure bids for change orders that do not materially change the scope of work set forth in a contract previously made, provided (i) the contract was made in compliance with bidding requirements, and (ii) no individual change amounts to more than five percent (5%) of the contract. (See Health and Safety Code § 32132 (c)).

c. The District shall not be required to secure bids in connection with an energy service contract or any necessarily related facility ground lease under certain circumstances. (See Government Code §4217.12)

d. Public Contracts Code §§ 22030 et seq. outline an alternative procedure for public works projects where a healthcare district's governing agency elects, by resolution, to become subject to the uniform construction cost accounting procedures set forth and has noticed the State Controller of that election. For additional

information, please refer to Article 3, Chapter 2, Part 3, Division 2 of the Public Contracts Code.

e. The Board shall award contracts for professional services as provided in Section 5.

Section 3. Bidding Procedures for Work.

Bids for Work exceeding \$25,000 submitted to the Board pursuant to Section 2.2(a) shall be subject to bidding procedures set forth in this Section 3 [Bidding Procedures for Work].

3.1 Preparation of Plans, Specifications, or Specifications of Proposed Work.

a. Upon determination that Work is required by the necessity or for the convenience of the District, the District shall prepare plans, specifications or a description of general conditions ("Specifications"). The Specifications shall be in such detail and written with such specificity as the nature of the Work may require. In establishing the Specifications, the District may consider the direct cost of the project as well as any requirement reasonably related to the quality, fitness and capacity of a bidder to perform the proposed Work satisfactorily. The Specifications document may be sold to potential bidders at cost or lent to potential bidders upon their furnishing such security as the replacement value of the Specifications may indicate.

b. If the nature or performance of the Work is such that prequalification of bidders is necessary or desirable, the District may establish a uniform prequalification system using a standard questionnaire to evaluate the ability, competency and integrity of bidders. In such event, the District may require each prospective bidder to complete and submit a standardized questionnaire and financial statements, subject to the provisions of Public Contract Code §§ 20101 et seq. The Specifications shall include procedures for such prequalification.

c. The Specifications shall include a requirement that all bids be accompanied by bidder's security in the form of cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer, made payable to the director of the department under which the work is to be performed. The security shall be in an amount equal to at least ten percent (10%) of the amount bid. (Public Contract Code § 10167.) Any bid not accompanied by one of the applicable bidder's security shall be rejected as non-responsive. The District shall return to all unsuccessful bidders their respective bidder's security within five (5) working days after awarding the contract.

d. When appropriate, the District may require that the successful bidder furnish a performance bond in the amount of one hundred percent (100%) of the contract sum at the time of entering into the contract. The performance bond shall be filed with the District to insure the District against faulty, improper or incomplete materials or workmanship, and to insure the District of complete and proper performance of contract.

e. The Specifications shall provide that the successful bidder to whom a contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) for any public work is awarded shall furnish a payment bond approved by the District. (Civil Code § 9550.1) The labor and material bond shall be filed with the District pursuant to applicable laws of the State of California. The District shall not require a payment bond from an architect, engineer, land surveyor or other professional consultant.

f. When appropriate as determined by the District, the Specifications may establish the time within which the whole or any specified portion of the Work shall be completed. (Government Code § 53069.85.)

g. When appropriate as determined by the District, the Specifications may provide that for each day completion is delayed beyond the specified date, the contractor shall forfeit a specified sum of money.

h. When appropriate as determined by the District, the Specifications may provide for a bonus to the contractor for completion of the project prior to a specified time. (Government Code § 53069.85.)

i. The Specifications shall provide that any prime contractor shall set forth in his/her bid: (i) the name and address of each subcontractor who will perform labor or render service or fabricate or install a portion of the Work and (ii) the portion of Work to be performed by each such subcontractor. [Please see Section 3.7 for details.]

3.2 Notice Inviting Bids. Where formal bidding is required (or otherwise deemed desirable by the the District), the District shall publish a notice inviting formal bids ("Notice Inviting Bids").

a. The first publication or posting of the Notice Inviting Bids shall be at least ten (10) days before the date of opening the bids. Notice shall be published at least twice, not less than five (5) days apart, in a newspaper of general circulation,

¹ Civil Code § 9550 *et seq.* becomes operative July 1, 2012, replacing Civil Code § 3247 *et seq.*

printed and published in the jurisdiction of the District (or, if there is no such newspaper, then in a newspaper of general circulation which is circulated in the jurisdiction of the District. (Public Contract Code § 20150.8.)

b. In addition, the District may also publish Notice Inviting Bids in a trade publication, as specified in Public Contract Code § 22036. (Public Contract Code § 20150.8.).

c. The District may also give such other notice as it deems proper.

3.3 Requirements of Notice Inviting Bids. The Notice Inviting Bids shall:

a. Describe the contemplated Work;

b. Set forth the procedure by which potential bidders may obtain copies of the Specifications;

c. State the final time and date and address for receiving and opening of bids (including designation of the appropriate District person or office) (Government Code § 53068; Public Contract Code §§ 4104.5, 22037);

d. If applicable, include procedures for prequalification and information relating to bid guarantee;

e. State the date, time and place for opening of bids;

f. Set forth any bond requirements (Civil Code § 95502);

g. If applicable, as determined by the District, establish the time within which the whole or any specified portion of the Work shall be completed (Government Code § 53069.85);

h. If applicable as determined by the District, provide that for each day completion is delayed beyond the specified time, the contractor shall pay specified liquidated damages, provided such liquidated damages are reasonable (Government Code § 53069.85);

² See footnote 1, above.

i. If applicable as determined by the District, establish as extra compensation to the contractor a bonus for completion of Work prior to a specified time (Government Code § 53069.85); and

j. Set forth such other matters, if any, as would reasonably enhance the number and quality of bids.

3.4 Preparation and Submission of Bids. Each prospective bidder shall submit a written bid under sealed cover. Upon receipt, the bid shall be date and time stamped. All bids shall remain sealed until the date and time set forth in the Notice Inviting Bids. Any Bid received by the District after the time specified in the Notice Inviting Bids shall be returned unopened. (Government Code § 53068.)

3.5 Examination and Evaluation of Bids.

a. All bids requiring Board action shall be required to be sealed and then opened at a time and place stated in the Notice Inviting Bids. The Chief Executive Officer or Chief Financial Officer will attend and officiate over the opening of bids ("Opening"). Any Board member or bidder may attend the bid opening. The bids will be made public for bidders and others properly interested parties who may be present at the Opening.

b. The Board reserves the right not to determine the low bidder at the Opening, to obtain the opinion of counsel on the legality and sufficiency of all bids, and to determine at a later date which bid to accept. Such determination shall be made within sixty (60) days of the Opening or unless a different period of time is specified in the Notice Inviting Bids.

c. In the event there are two or more identical lowest bids pursuant to any provision requiring competitive bidding, the District may determine by lot which bid shall be accepted. (Government Code § 53064.)

3.6 Awarding of Contracts.

a. The Board shall award the contract to the lowest bidder, provided such bid is responsive and reasonable and meets the requirements and criteria set forth in the Notice Inviting Bids, as determined by the District. Notwithstanding anything to the contrary, the Board is under no obligation to accept the lowest responsive and responsible bidder and reserves the right to reject all bids. (Health and Safety Code § 32132.) Factors which the District may take into account to determine whether a bidder is "responsible" include prior performance, financial capacity,

technical expertise, reputation for reliability and satisfactory service, and other factors that may be set forth in the Specifications.

b. If the District determines that the lowest bidder is not responsible, the Board may award the contract (i) to the next lowest responsible bidder, or (ii) to the lowest bidder on the condition that the lowest bidder furnish security other than or in addition to that set forth in the Specifications.

c. If the Board decides to award the contract for Work to a bidder other than the lowest bidder pursuant to subparagraph (b), the District shall first notify the low bidder of any evidence, either obtained from third parties or concluded as a result of the District's investigation, which reflects on such bidder's responsibility. The District shall afford the low bidder an opportunity to rebut such adverse evidence and shall permit such bidder to present evidence that it is qualified to perform the Work. Such opportunity to rebut adverse evidence and to present evidence of qualification may be submitted in writing or at an informal hearing before the awarding body, committee and/or individual, as determined by the District.

d. Any contract awarded by the Board shall be subject to all applicable provisions of federal, California and local laws, including without limitation laws relating to the performance of work for a public agency. In the event of a conflict between any contract documents and any applicable law, the law shall prevail.

3.7 Subcontractors. As provided in Section 3.1(j), the Specifications shall provide that any bidder shall set forth in his/her bid: the name and the location of the place of business of each subcontractor who will (a) perform labor or render service to the prime contractor in connection with the project or, (b) under subcontract to the prime contractor, specially fabricate and install a portion of the Work according to detailed drawings contained in the Specifications, in an amount in excess of one-half of one percent (0.5%) of the prime contractor's total bid. The bidder shall also specify in his/her bid the portion of the work that will be done by each such subcontractor. The bidder shall list only one subcontractor for each portion as is defined by the bidder in his/her bid. (Public Contracts Code § 4104.)

3.8 Construction Management Model. Construction management arrangements may be appropriate where District participation in the review and approval of subcontractor bids can lead to substantial cost savings and serve to cap maximum costs. The District may adopt procedures designed to derive the benefits and advantages of using professional management oversight of a project consistent with the provisions of Section 5.5.

Section 4. Bid Conditions.

All formal bids shall be in writing and sealed and shall be subject to the following general conditions.

4.1 Three Bids. The District shall consider a minimum of three (3) bids; however, where the District cannot obtain three bids or when it decides that time will not permit obtaining three bids, it may consider a minimum of two (2) bids.

4.2 Reference Check. Contracts shall be awarded to the lowest responsible bidder meeting the applicable criteria established by the District, subject to a check of references and review of legal counsel, as applicable.

4.3 Multiple Bids. When bids for multiple items are solicited at the same time, the District may accept parts of one or more bids (provided the Notice Inviting Bids so indicates) unless the bidder has specified to the contrary, in which event the District reserves the right to disregard the bid in its entirety.

4.4 Minor Deviations. The District reserves the right to waive inconsequential deviations from the specifications in the substance or form of bids received.

4.5 No Advantage. No illegal, unfair, unethical or otherwise improper advantage shall be accorded to any bidder by the District.

Section 5. Professional Services.

Bids for Work submitted to the District pursuant to Section 2.2(c) shall be subject the procedures set forth in this Section 5.

5.1 No Competitive Bidding. The District shall award contracts for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction management firms on the basis of demonstrated competence and on the professional qualifications necessary for satisfactory performance of the services required. (Government Code § 4526.) No competitive bidding shall be required. (Health and Safety Code § 32132(b).) In the event the District determines that the services required are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest, the District may employ a formal bidding procedure in awarding contracts for such professional services. (Government Code § 4529.)

Adopted: April 24, 2014

5.2 Compensation for Services. The District may compensate persons or firms providing such services as it deems proper for the services rendered. The District may establish procedures that assure the professional services of private architectural, landscape architectural, engineering, environmental, land surveying and construction management firms are engaged at fair and reasonable prices. (Government Code § 4526.)

5.3 Requests for Proposals for Architectural and Engineering Services. Any Requests for Proposals for architectural or engineering services shall contain the following statement in boldface type: "Please be advised that the successful design professional will be required to indemnify, defend and hold harmless the District against liability for claims that arise out of or relate to the negligence, recklessness or willful misconduct of the design professional." (For additional information, please refer to Public Contract Code § 20103.6 and Civil Code § 2782.8.)

5.4 Small Business Participation. In selecting firms and persons to provide private architectural, landscape architectural, engineering, environmental, land surveying or construction management services, the District shall ensure that the selection process assures maximum participation of small business firms to the extent such participation is consistent with the demonstrated competence and professional qualifications necessary for satisfactory performance of the services required. (Government Code § 4526.) "Small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has one hundred (100) or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees. (Government Code § 14837.)

5.5 Construction Management Services. The District may adopt procedures and award contracts for construction management services. Selection for professional services of construction project management professionals shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. The District shall require that any individual or firm proposing to provide construction project management services provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general

management and administration of a construction project. (Government Code § 4529.5.)

Section 7. Miscellaneous Provisions.

7.1 Authority to Make Purchases. The CEO or the CEO's designee are hereby given authority to make all purchases and to execute all purchase orders or contracts for the District duly authorized pursuant to this Policy or other applicable policies referenced herein. All purchases and contracts shall be upon written order, whenever reasonably possible, and the District shall keep and maintain written records of the same.

7.2 Right to Direct Competitive Bidding. The District reserves the right to direct competitive bidding (including but not limited to lowest bid) for any contract, regardless of whether or not competitive bidding is required by law or required by the terms of this Policy.

7.3 Electronic Transmission. The District may elect to receive bids and supporting materials over the Internet, provided it complies with the provisions of Public Contract Code § 1601.

7.4 Flexibility and Waiver of Policy Requirements. In recognition of the fact that the contracting and procurement needs of the District may, from time to time, render certain procedures or requirements set forth in this Policy impractical, the CEO or his/her designee is authorized to permit or waive deviations from this Policy, to the extent permitted by law, in consultation with the District's legal counsel and upon making a written finding that such deviations are in the best interest of the District.

7.5 Conflict of Interest. With respect to all contracts covered by this Policy, any practices or procedures which might result in unlawful activity shall be prohibited, including practices which might result in rebates, kickbacks or other unlawful consideration. No employee of the District may participate in any selection process when such employee has a relationship with a person or business entity seeking a contract under this Section which would subject those employees to the prohibition of Government Code § 87100.3 (See Government Code § 4526.

³ Section 87100 provides, "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Adopted: April 24, 2014

Updated and Approved by the Board: 10/24/24