

CLEAR CREEK COMMUNITY SERVICES DISTRICT
COMPETITIVE BIDDING AND EMERGENCY
CONTRACTING POLICY & PROCEDURES
JANUARY 12, 2005

1. The District¹ shall abide by the Public Contract Code Section 20680-20685.5 in awarding contracts by competitive bidding process.
2. The award of contracts without benefit of the competitive bidding process will be made in the event of an emergency, as defined in Public Contract Code Section 22050.
3. The purpose of this policy is to give all interested parties the opportunity to do business with the District on an equal basis. Contracts shall not be steered to businesses or individuals because of political connections, friendship, favoritism, corruption or other factors. This ensures that the public will receive the best value for the money spent by promoting competition among businesses.²
4. The District may perform any work of construction or operation under its own supervision using force account labor or may contract for the performance of such work by others.³
5. State law authorizes local agencies to adopt procedures for acquiring supplies and equipment.⁴
6. All contracts for the construction of any unit of work estimated to cost in excess of \$15,000 shall be let to the lowest *responsible bidder*⁵ after competitive bidding. The Board of Directors shall have the right to reject any/all bid(s), in which case the Board of Directors may call for new bids.⁶
7. In the event no proposals are received, or where the estimated cost of work does not exceed the sum of \$15,000 or where the work consists of emergency work, the Board of Directors may choose to use the force account. In the case of an emergency, if notice for bids will not be given, the Board of Directors shall comply with Chapter 2.5, commencing with Section 22050.⁷

¹Gov't. Code Section 61000

²Public Contract Code Section 20680

³Public Contract Code Section 20680

⁴Gov't. Code Section 54201 and following

⁵As determined by the District during pre-certification process utilizing Exhibit A

⁶Public Contract Code Section 20685(a)

⁷Public Contract Code Section 20685(b)

8. The District shall have the authority to purchase in the open market, without bids, materials and supplies for use in new construction work or improvement, except work referred to in #6 above, which may not be purchased if the cost exceeds \$15,000 without calling for bids and awarding the contract to the lowest *responsible bidder*.⁸

9. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidders security:

- a) Cash
- b) Certified or cashier's check made payable to the District
- c) A bidders bond executed by an admitted surety insurer, made payable to the District.

Upon award to the lowest *responsible bidder*,⁹ the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall the security be held by the District beyond 60 days from the time the award is made.¹⁰

10. In case of an emergency, the District, pursuant to a 4/5 vote of its Board of Directors, 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 competitive bidding.¹¹

11. Before the Board of Directors takes any action pursuant to #10 above, it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit the delay resulting from competitive bidding solicitation for bids, and the action is necessary to respond to the emergency.¹²

12. The Board of Directors, by a 4/5 vote may delegate, by ordinance, to the General Manager, the authority to order any action pursuant to #10 above.¹³

⁸Public Contract Code Section 20685(c)

⁹As determined by the District after submitting attached Exhibits A and B

¹⁰Public Contract Code Section 20685.5(a-d)

¹¹Public Contract Code Section 22050(a)(1)

¹²Public Contract Code Section 22050(a)(2)

¹³Public Contract Code Section 22050(b)(1)

ADMINISTRATIVE PROCEDURES

1. In order to give all interested parties an opportunity to do business with the District and to get the best price for the customers, the District will publicize all opportunities available. This will be accomplished by publishing a notice inviting bids in a newspaper of general circulation that is printed or published in the District's jurisdiction,¹⁴ or if there is none, posting the notice in at least three public places in the jurisdiction.

2. The District will ensure a fair bidding process by developing uniform bidding instructions, documents, specifications, maps, bid walk, etc. and all bidders will be provided with identical information. Any modifications to a bid package will be made before the bidding deadline and will be promptly provided to all bidders. The District will extend time for submission of bids if any material changes, additions or deletions are made to the bidding documents later than 72 hours prior to the bid closing.¹⁵ This step is important to achieve a fair process and to ensure a defensible decision in awarding the contract and enforcing the contract with the successful bidder.

3. Contracts will be awarded to the lowest *responsible bidder* in a sealed bid process. The bidder who meets the contractor licensing requirements, submits a bid that conforms to the terms of the bid package and is the lowest monetary bid in a sealed bid process will generally be entitled to award of the bid.¹⁶ If the District has a concern about the contractor's competence or previous billing practices (issues not addressed in Exhibit A), the contractor will be given an opportunity to rebut information about his or her inability to perform the work in a non-responsibility hearing.

4. The District will determine what certain types of services being let for competitive bidding, of which price will not be the only or primary consideration. For architectural, landscape architectural, engineering, environmental, land surveying or construction project management services the selection of a firm must be based on demonstrated competence and having the professional qualifications necessary for satisfactory performance of the services required.¹⁷ Price will be a consideration after competence and qualification requirements are met.¹⁸

c) Attached Exhibit A must be completed and submitted by each bidder prior to submission of a sealed bid, to allow the District time to determine *responsible bidder* status. If the bidder anticipates or intends to subcontract any portion of the job, it

¹⁴See, e.g. California Public Contract Code Section 21064

¹⁵California Public Contract Code Section 4104.5

¹⁶California Public Contract Code Section 20162; California Business and Professional Code Section 7030.5

¹⁷California Gov't Code Section 4526

¹⁸California Gov't Code Section 4526

may utilize only subcontractors who have also submitted Exhibit A and been determined a *responsible bidder*.

b) Prior to bid submission, the District will require all bidders to provide a statement listing names of all surety companies utilized in the past five years. The bidder must disclose whether the surety or sureties bonding bidder's jobs have been required or requested to complete any part of bidder's work during the past five years.

c) All bidders will be required to provide five references for satisfactory completion of projects similar in nature to the work being bid on. Evidence of incomplete or incompetent performance will eliminate bidder from competition.

d) The District will require bidders to provide a summary of all claims made in the past five years. This includes claims made through arbitration or litigation against bidder by owners and against owners by bidder. The final status of each claim shall be detailed. Claims resolved in favor of the bidder in litigation or arbitration, or which were settled without any payment by the bidder or its insurers/sureties shall not be counted as a claim.

5. In consideration of other non-price issues in awarding contracts, the District will not eliminate a *responsible bidder* from competition due to concerns that may arise (e.g. concerns about the bidder's labor relation practices) on which Federal law pre-empts the District from imposing additional penalties on the bidder, such as disqualification from doing business with the District. The District will not impose "local preferences" or "Buy American" requirements, as these kinds of requirements can be manipulated to engage in the kind of favoritism at odds with the principles of fairness underlying public contracting laws in general.¹⁹

6. The District's Board of Directors, General Manager, employees and agents shall not participate in "wining and dining" by prospective contractors. Any such activities must be disclosed and may disqualify an official from participating in the contracting process. District officials subject to reporting requirements²⁰ must disclose meals, sporting event tickets and other such gifts in excess of \$50 from a single source on their Annual Statement of Economic Interests.²¹ These may not add up to more than \$340 in a calendar year.²² The gift limit is modified every two years to reflect changes in the CPI; the Fair Political Practices Commission website typically has current information on gift limitation. Receiving gifts from potential bidders of \$340 or more in a 12 month period prior to the bidding process creates a potentially disqualifying economic interest in the contract.²³

¹⁹See California Public Contract Code Section 100 and "Trustworthiness in Public Contracting: Back to Boss Tweed? CF&I Steel v. Bay Area Transit District," Scott J. Kaplan, 31 Public Contract Law Journal, 237 (2002)

²⁰California Gov't Code Section 89503

²¹California Gov't Code Section 87207(a)(1) (requiring public officials to report sources of gifts aggregating \$50 or more and a general description of the business activity of the gift giver)

²²California Code of Regulations Section 18940.2

²³California Govt. Code Section 82028, 87103(e); 2 California Code of Regulations Section 18703.4

7. A District Director may not have a financial interest in any contract made by the Board of Directors on which he or she is a member.²⁴ A "financial interest" includes a direct or indirect financial interest. A direct financial interest is present when the Director is the party contracting with the agency. An indirect financial interest involves a Director who has a financial relationship with the contracting party or will receive some benefit from the making of the contract with the contracting party. It does not matter if the official's financial interest is positively or negatively affected.

8. Upon receipt and acceptance of the apparent successful bid, the General Manager will present the bid, with a recommendation for award of the contract to the Board of Directors at a public meeting. The Board of Directors will make the final decision on the award.

²⁴California Gov't Code Section 1090 and following

PROCUREMENT PROCESS

Receiving the best price on services and materials is the responsibility of the Board of Directors and General Manager, as public officials, to be prudent stewards of scarce public resources. This means receiving materials and services of appropriate quality for a competitive price.

The key to assuring the customers of this fact is for the District to use a competitive and comparative process that enables it to evaluate both price and quality. This is not to say that the District should put all contracts out to bid, however, whether or not the process the District uses to select contractors for services or materials provides assurances that it is receiving the best value for the funds spent.

Both the business community and the customers expect the District's processes to be fair, therefore elements of process will include, but not be limited to:

1. Publicized the opportunity to compete for the District's business.
2. Provide the same information to all businesses so no one particular business has an unfair advantage.
3. Apply the evaluation criteria consistently to all bidders.
4. The District will not call for "best and final" prices after bids are received. This action is referred to as "bid shopping" and is prohibited under this process. This practice raises concerns about the fairness of the process and gives the public the impression that the District may keep asking bids be resubmitted until the District positions the bidder they want to do business with the lowest bid.
5. Successful administration of the bidding process is to avoid having a would-be vendor in submitting an unrealistically low bid, only to ask for change orders or propose amendments to the contract that would increase the costs. This practice would be unfair to the vendor who would have stuck to an original, ultimately lower bid.
6. Competitive bidding avoids the appearance of favoritism. Fairness in the process ensures that a would-be vendor does not have an advantage due to friendship with a District official, a past history of support for someone's campaign, or family relationship. Giving preference to friends is likely to have the appearance of cronyism²⁵ at best and corruption as worst.

²⁵Cronyism is a term attributed to the *New York Times* in the early 1950s. The newspaper used the term to criticize a presidential administration for appointing friends to positions in government without regard to their qualifications (the *Times* described the administration for having a "sorry reputation for corruption, cronyism, extravagance, waste and confusion").

7. Ensure the awarded contract is administered in such a way that the District receives the full benefit of the funds spent.

8. The checks and balances in the procurement process are designed to ensure that no one official plays too great a role in contracting decisions. Layers in the process limits any one official's ability to skew the outcome based on personal interests, as opposed to the public interest. Fair processes prevent improprieties and increase the likelihood that the public will, in fact, get the best deal for the funds spent.

PRE-BID RESPONSIBLE BIDDER INFORMATION

EXHIBIT A

Completion of Work by Surety:

Provide a list of names of all surety companies utilized in the past five (5) years (attach additional sheet). State whether the surety or sureties bonding bidder's jobs have been required or requested to complete any part of bidder's work during the last five (5) years. Yes____ No____. If yes, please provide the following information:

Surety Name and Address: _____
Period Covered: _____
Job Surety Completed: _____

Surety Name and Address: _____
Period Covered: _____
Job Surety Completed: _____

Surety Name and Address: _____
Period Covered: _____
Job Surety Completed: _____

Surety Name and Address: _____
Period Covered: _____
Job Surety Completed: _____

Surety Name and Address: _____
Period Covered: _____
Job Surety Completed: _____

Financial and Performance Information

Litigation History:

Submit a summary of all claims made in the last five (5) years. Summary should include all claims made through arbitration or litigation against the contractor by owners and against owners by contractor. Indicate final status of each claim. (Attach a separate sheet.)

Claims that were resolved in favor of the bidder in litigation or arbitration, or which were settled without any payment by the bidder or its insurers/sureties, or pending claims shall not be counted as a claim.