

LEASE-LEASEBACK CONTRACTS

The district may lease currently owned district property to any person, firm, or corporation for a minimum of \$1 per year, as long as the lease requires the person, firm, or corporation to construct a building or buildings on the property for the district's use during the lease and the property and building(s) will vest in the district at the expiration of the lease ("lease-leaseback"). (Education Code 17406.)

(cf. 3312– Contracts)

Any lease-leaseback contract shall be awarded through a competitive "best value" procurement process whereby a person, firm, or corporation is selected on the basis of objective criteria for evaluating the qualifications of proposers, with the resulting selection representing the best combination of price and qualifications. To make this determination, the district shall use the following procedures: (Education Code 17400, 17406)

1. Request for Sealed Proposals: The Superintendent or designee shall prepare a request for sealed proposals which shall include:
 - a. An estimate of the project's price
 - b. A clear, precise description of any preconstruction services that may be required and the facilities to be constructed
 - c. The key elements of the contract to be awarded
 - d. A description of the format that proposals shall follow and the elements they shall contain
 - e. The standards the district will use in evaluating proposals
 - f. The date on which proposals are due
 - g. The timetable the district will follow in reviewing and evaluating proposals

For any project that will involve the use of preconstruction services, the request for sealed proposals must also require proposers to include a fee to perform the preconstruction services as part of their sealed proposal to the District.

2. Notice: At least 10 days before the date for receipt of the proposals, the Superintendent or designee shall give notice of the request for sealed proposals using both of the following methods:
 - a. Providing notice at least once a week for two weeks in a local newspaper of general circulation pursuant to Public Contract Code 20112.
 - b. Providing notice in a trade paper of general circulation published in the county where the project is located.

The Superintendent or designee also may post the notice on the district's web site or through an electronic portal.

3. Prequalification: All proposers shall be prequalified in accordance with Public Contract Code 20111.6(b)-(m) in order to submit a proposal. Any electrical, mechanical, plumbing and iron/steel subcontractors shall be subject to the same prequalification requirements. These prequalification requirements shall be included in the request for sealed proposals and in the awarded contract.

(cf. 3311 – Bids)

4. Evaluation Criteria: The request for sealed proposals shall identify all criteria that the district will consider in evaluating the proposals and qualifications of the proposers, which shall include relevant experience, safety record, and price proposal, and which may include additional factors specified by the district.

The request for sealed proposals shall specify whether each criterion will be evaluated on a pass-fail basis or will be scored as part of the "best value" score, and whether proposers must achieve any minimum qualification score for award of the contract. For each scored criterion, the district shall identify the methodology and rating or weighting system that will be used by the district in evaluating the criterion, including the weight assigned to the criterion and any minimum acceptable score

5. Evaluation of Proposals: All proposals received shall be reviewed to determine whether they meet the format requirements and the standards specified in the request for sealed proposals. The District shall evaluate the qualifications of the proposers based solely upon the criteria and evaluation methodology set forth in the request for sealed proposals, and shall assign a best value score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the district.
6. Award of Contract: The award of the contract shall be made by the Governing Board to the responsive proposer whose proposal is determined, in writing by the Board, to be the best value to the District.

If the selected proposer refuses or fails to execute the tendered contract, the Board may award the contract to the proposer with the second highest best value score, if deemed in the best interest of the district. If that proposer then refuses or fails to execute the tendered contract, the Board may award the contract to the proposer with the third highest best value score.

Upon issuance of a contract award, the district shall publicly announce its award, identifying the entity to which the award is made, along with a statement regarding the basis of the award. The statement regarding the contract award and the contract file shall provide sufficient information to satisfy an external audit.

7. Rejection of Proposals: At its discretion, the Board may reject all proposals and request new proposals.

Prior to entering into a lease-leaseback agreement, the Superintendent or designee shall have on file the contractor's enforceable commitment that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. (Education Code 17407.5)

Legal Reference:

EDUCATION CODE:

17400 Definitions

17406 Lease-leaseback contract

17407.5 Use of a skilled and trained workforce

PUBLIC CONTRACT CODE:

20111.6 Prequalification procedures

20112 Notices

COURT DECISIONS:

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261