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ASSOCIATION OF CHIEF BUSINESS OFFICIALS FALL CONFERENCE

Contracting for Goods and Services in Today's Volatile Economy

10/24/2011

PRESENTED BY:

Christopher Fallon &
Heather DeBlanc

Contracting for Goods and Services in Today's Volatile Environment

Association of Chief Business Officers Fall Conference | October 24, 2011

Presented by: Heather DeBlanc and Christopher Fallon

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Overview

Bidding and Awarding of Contracts

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Bidding and Awarding of Contracts

- Competitive bidding procedure
 - Notice inviting bids
 - Pre-bid conference/informational meeting
 - Sealed bids
 - Bid opening
 - Award of contract

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Exceptions to Bidding

- **Exceptions to Bidding**
 - Informal Bids Below Bid Limit
 - Special Services
 - Professional Services
 - Lease or Lease-Purchase
 - Energy Services Contracts
 - “Piggyback” & CMAS
 - Electronic Data Processing Systems
 - Emergency Repairs
 - Textbooks and Educational Materials
 - Perishable Foodstuffs
 - Relocatables
 - Futility

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Exceptions to Bidding – Informal Bids Below Bid Limit

Informal Bidding Permitted:

1. Contracts up to \$78,500 for:
 - Equipment, materials, or supplies
 - Services, except construction services
 - Repairs, incl. maintenance that are not a public project
2. Public works contracts for less than \$15,000 may be informally bid

PCC §§ 20651(a)(1-3)

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Exceptions to Bidding – Informal Bids Below Bid Limit

- Informal Bidding
 - Annual Notice Inviting Contractor to Register
 - Contractors on List Given Notice of Projects
 - Manner District Deems Appropriate
- No Bid Splitting
- Record Maintenance

PCC § 20657

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Exceptions to Bidding – Special Services

- Special Services
 - Districts have authority to contract for special services: financial, economic, accounting, engineering, legal, administrative
 - Gov. Code § 53060
 - Specially trained, experienced and competent
 - No bid requirement – case law
 - Includes:
 - Research and Development Services
 - Community College Bookstore Operations

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Exceptions to Bidding – Professional Services

- Professional Services
 - Architects, engineers, land surveyors, and construction management firms need competitive selection
Gov. C § 4526
 - Bid Requirements do not apply
PCC § 20651(c)
 - Request for Proposals/Requests for Qualifications
 - Avoid appearance of impropriety
- Insurance Services
- Waste Management Services
PCC § 20651(c)

Pub. Resources C § 40050

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Exceptions to Bidding – Lease or Lease-Purchase

- Lease or Lease-Purchase of Equipment or Services
 - CCD may enter into lease or lease-purchase agreement for equipment or services as defined in Accounting Manual
 - EC §§ 81550-8155
 - Notice calling for bids or proposals
 - Term shorter of useful life or 10 years
 - Lease renewal increases cannot 7%

EC §§ 81550-81552

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Exceptions to Bidding – Energy Services Contracts

- Energy Services Contracts
 - District may enter into energy service contract and related ground lease
 - On terms BOT finds in District's best interest
 - Proper notice, hearing, and findings required
 - May use competitive selection process to select vendor, but not required
- CCDs can enter into energy management agreements for energy management systems involving solar and energy management systems

Gov. C § 4217.10, et seq.

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Exceptions to Bidding – “Piggyback”

- “Piggyback” Bidding
 - Districts may by contract, lease, requisition, or purchase order:
 - Lease data processing equipment
 - Purchase materials, supplies, equipment, vehicles, or other personal property by using the bid of another public agency

PCC § 20652

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Exceptions to Bidding - CMAS

- California Multiple Award Schedule (“CMAS”)
 - Authorizes Department of General Services to competitively bid contracts for materials, equipment, or supplies and make those services and products available to local public agencies
PCC § 10298
 - CCDs may purchase through DGS
PCC § 20653
 - Information Technology Goods and Services
PCC § 10299
 - Telecommunication Systems
PCC § 12120

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Exceptions to Bidding – Electronic Data Processing Systems

- Electronic Data Processing Systems and Equipment
 - Acquisition of IT services
 - Contract with 1 of 3 lowest responsible competitive bids or proposals for EDP systems, equipment, telecommunications equipment

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Exceptions to Bidding – Emergency Repairs

- Emergency Repairs
 - May perform emergency repairs, alterations, work, or improvement necessary without competitive bidding
 - Only allowed to permit the continuance of classes or to avoid danger to life or property

PCC § 20654

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Exceptions to Bidding – Textbooks and Educational Materials

- Textbooks and Educational Materials
 - Districts may purchase supplementary textbooks, library books, etc.
 - In any amount needed without taking estimates or advertising for bids

Ed. C § 81651



Exceptions to Bidding – Perishable Foodstuffs

- Perishable Foodstuffs
 - May be purchased according to District regulations, despite any conflicting PCC sections



PCC § 20660



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Exceptions to Bidding - Relocatables

- CCDs may lease relocatables up to 10 years
 - Requires a majority vote authorizing the action and specifying the terms of the lease
- CCD may purchase the relocatable at an agreed upon purchase price; rental payments paid for the use shall be applied in whole or in part

Ed. C § 81526

Ed. C § 81527

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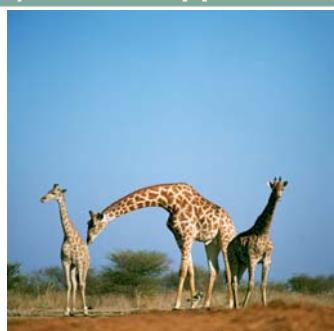
Exceptions to Bidding - Futility

- When efforts would be unavailing, impractical, or futile
- Should adopt resolution making necessary findings
- Case law interpreting futility exception:
 - *Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.
 - *Los Angeles Dredging Company v. City of Long Beach* (1930) 210 Cal. 348.
 - *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.

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Hiller v. City of Los Angeles
(1961) 197 Cal.App.2d 685, 694.



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Los Angeles Dredging Co. v. City of Long Beach (1930) 210 Cal. 348.



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Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.



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- Uniform Public Construction Cost Accounting Act
 - Public Contract Code §§ 22000 et seq.
- Developed and Administered by Commission
 - Procedures follow normal industry procedures
 - California Community College Budget and Accounting Manual meet requirements of the Act

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- Participation
 - Governing Body elects to participate
 - File Resolution with State Controller
 - Agency may withdraw – file resolution with Controller
- Applies Only to Bidding
 - Bonds, prevailing wage, insurance requirements – no change to statutory provision

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- Benefits – Flexibility for Public Projects
 - \$30,000 or Less – by employee (force account), by negotiated contract or by purchase order
 - \$175,000 or Less – Informal Procedures
 - May speed up award process
 - May improve timeliness of completion
 - Eliminates some red tape and paperwork
 - Over \$175,000 – Competitive Bidding
 - Note: Bid Limit raised from \$125,000 to \$175,000 – July 1, 2011

PCC § 22032

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- **Board Adopts Ordinance**
 - District to maintain list of qualified contractors by categories of work
 - All contractors on list & specific trade journal – mail notice inviting informal bids
 - Notice not less than 10 days before bids are due
 - Board may delegate authority to award informal contracts
- **Contracting for Maintenance Work**
 - Alternative bidding allowed (PCC 22003)
 - If District misclassifies project (\$30,000 or more) as maintenance, Commission may conduct review (PCC 22042(c))

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UPCCAA

- Commission's website:
http://www.sco.ca.gov/ard_cuccac.html
- Uniform Public Construction Cost Accounting Act FAQ:
http://sco.ca.gov/Files-ARD-Local/cuccac_faq.pdf
- New Bid Limits eff. 7/1/11:
http://www.sco.ca.gov/Files-ARD-Local/cuccac_cuccac_bidlimits.pdf
- Cost Accounting Policies and Procedures Manual:
http://www.sco.ca.gov/Files-ARD-Local/cuccac_cuccac_man.pdf

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Thank You!

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