

Lease-Leaseback Contracts

AR 3311.2(a)

Business and Noninstructional Operations

The district may lease currently owned district property to any person, firm, or corporation for a minimum of \$1 per year, for a term not to exceed 99 years, 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 17403, 17406)

(cf. 3280 - Sale or Lease of District-Owned Real Property)
(cf. 3312 - Contracts)

Before the district enters into such a lease or agreement, it shall have available a site upon which a building may be constructed for use by the district, shall have complied with requirements related to the selection and approval of sites, and shall have prepared and adopted plans and specifications for the building that have been approved in accordance with Education Code 17280-17316. (Education Code 17402)

(cf. 7150 – Site Selection and Development)

Procedures for Awarding the Contract

The district's intent to enter into a lease-leaseback contract may be described in a resolution adopted by the Governing board which includes, but is not limited to, a description of the available site and the building to be constructed, the amount and term of the lease, and where to obtain information about the procedures for submitting a proposal.

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)

To make this determination, the district shall use the following procedures: (Education Code 17406; Public Contract Code 2600)

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 and the qualifications of the proposers, including:
 - (1) Relevant experience
 - (2) Safety record
 - (3) Price proposal, including, at the district's discretion, either a lump-sum price for the contract to be awarded or the proposer's proposed fee to perform the services requested, including the proposer's proposed fee to perform preconstruction services or any other work related to the facilities to be constructed, as requested by the district
 - (4) 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
 - (5) For each scored criterion, the methodology and rating or weighting system that will be used by the district in evaluation the criterion, including the weight assigned to the criterion and any minimum acceptable score
 - (6) Other factors established by the district
 - f. The date on which proposals are due
 - g. The timetable the district will follow in reviewing and evaluating proposals
 - h. A statement that the project is subject to the skilled and trained workforce requirements specified in Public Contract Code 2600-2603
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:** A proposer shall be prequalified in accordance with Public Contract Code 20111.6(b)-(m) in order to submit a proposal. Any electrical, mechanical, and plumbing subcontractors shall be subject to the same prequalification requirements.

(cf. 3311 - Bids)

4. **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.

5. **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.

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

Any lease-leaseback agreement shall be reviewed by the district's legal counsel to ensure that all required terms, including a lease term that provides for the district's occupancy of the building or improved property during the lease and an appropriate financing component, are included in the agreement.

Skilled and Trained Workforce

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. The entity may demonstrate such commitment through a project labor agreement, by becoming a party to the district's project labor agreement, or through an agreement with the district to provide evidence

of compliance on a monthly basis during the performance of the project or contract. (Education Code 17407.5; Public Contract Code 2602)

Skilled and trained workforce means that all the workers performing the work are either skilled journeypersons or apprentices registered in a state-approved apprenticeship program. At least 60 percent of the skilled journeypersons employed to perform the work shall be graduates of any apprenticeship program for the applicable occupation or at least 60 percent of the hours worked by skilled journeypersons shall be performed by graduates of an apprenticeship program, with the exception of certain occupations specified in Public Contract Code 2601 which are subject to a 30 percent threshold. (Public Contract Code 2601)

If the contractor fails to provide the monthly report demonstrating compliance with the skilled and trained workforce requirements or provides an incomplete report, the district shall withhold further payments until a complete report is provided. If a report does not demonstrate compliance with the skilled and trained workforce requirements, the district shall withhold further payments until the contractor provides a sufficient plan to achieve substantial compliance with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. In addition, the district shall forward to the Labor Commissioner a copy of the monthly report, any plan to achieve compliance, and the district's response to that plan. (Public Contract Code 2602)

(cf. 9124 - Attorney)

Legal Reference:

EDUCATION CODE

17280-17316 Construction of school buildings; approvals

17400-17429 Leasing property, especially:

17400 Definitions

17403 Term of lease or agreement

17406 Lease-leaseback contract

17407.5 Use of a skilled and trained workforce

PUBLIC CONTRACT CODE

2600-2603 Skilled and trained workforce requirements

20111.6 Prequalification procedures

20112 Notices

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (2016) 247 Cal. App. 4th 235

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

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>