

Legal Brief



To Bid or Not to Bid: Some Considerations for Special Districts

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Whether building a new fire station, repairing a waterline, hiring an auditor, or buying paperclips, special districts regularly face the question: Do we need to bid this contract? Sometimes bidding is legally required, sometimes it is a best practice, and sometimes it creates more problems than it solves. The key is recognizing which approach applies.

Why We Bid

Competitive bidding exists to protect the public trust. Courts have long emphasized that bidding discourages favoritism, prevents fraud, and fosters competition that lowers costs. By publishing a notice, collecting sealed bids, and awarding to the lowest responsible bidder, districts help ensure contracts are awarded openly and fairly.

The Bidding Process

Formal bidding typically begins with a public notice and bid package describing the project, specifications, and contract terms. Interested contractors must submit sealed bids by the deadline.

The contract must then be awarded to the lowest responsive and responsible bidder. “Responsive” means the bid meets the requirements in the solicitation. “Responsible” refers to the bidder’s qualifications and reputation. Minor errors may be waived, but material defects can require disqualification. Disputes sometimes result in bid protests, and in uncertain cases the safest course might be to reject all bids and start over.

Different Rules for Different Districts

The formal bidding process is very similar across agencies throughout the state; especially for “public works”—i.e., construction, alteration, demolition, installation, or repair work. The specific threshold at which bidding is required for such contracts can vary widely, however. To cite but two examples; the minimum bidding threshold for municipal *utility* districts is \$2,000 (Pub. Cont. Code § 20192), but the minimum threshold for municipal *water* districts is \$35,000 (Pub. Cont. Code § 20640). Due to the many agency-specific statutes, it is essential that each district knows which thresholds apply to its own operations.

Alternatives & Exceptions

Competitive bidding serves important goals, but it can be slow or ill-suited for certain projects. California law therefore provides several alternatives and exceptions, including the following:

- *The Uniform Public Construction Cost Accounting Act* (Pub. Cont. Code § 22000 *et seq.*) allows districts that choose to be subject to the Act to use higher thresholds and simplified procedures. Formal bidding is required only for projects over \$220,000, with informal or negotiated processes allowed for smaller amounts.
- Design-build allows an agency to award a single contract for both design and construction, awarded on “best value” rather than low bid. This can streamline delivery but requires more upfront work and reduces design control. Recent statutes have greatly expanded the availability of this option for special districts.
- Cooperative purchasing allows districts to “piggyback” on competitively awarded contracts from other agencies.
- Emergency contracting without bidding may be allowed when sudden threats to health, safety, or essential services arise. Statutes typically require a supermajority board finding and regular review until the emergency passes.
- Maintenance work is generally exempt from bidding, but districts may need to carefully distinguish between maintenance work and repair work.

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- Professional service contracts for architecture, engineering, legal, financial, and similar services are selected based on qualifications, not the lowest bid. Many agencies still use RFPs or RFQs, though state law does not require them.

The Role of Local Policy

State law requires every local agency to adopt procurement policies. Well-drafted policies do more than ensure compliance—they provide clarity and efficiency. District policies should distinguish between procedures for

different types of contracts; establish clear dollar thresholds for bidding and approval; and anticipate exceptions and guide staff on protests or contingencies.

Policies are not self-executing, however. Staff and decision makers should be trained on how to implement the policy and

the districts should periodically review and update their policies to reflect changes in law or district practice.

Bottom Line

Competitive bidding safeguards the public interest, but it is not always required—or practical. With clear policies, proper training, and an understanding of exceptions, districts can balance compliance with flexibility and ensure public funds are spent wisely.