

## Lewis Center for Educational Research

AR 3311 BUSINESS - NON-INSTRUCTIONAL OPERATIONS  
BIDS

Adopted: May 10, 2021

Revised:

### Guidelines for Selecting Contractors/Vendors

#### A. Avoiding Waste and Reducing Costs

The Lewis Center for Educational Research (LCER) will conduct appropriate oversight of vendors, ensuring that vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The LCER will participate in state and local intergovernmental agreements or inter-entity agreements for procurement of goods and services, such as statewide contracts administered by the Department of General Services when available and appropriate.

#### B. Prequalification Procedures

The LCER may, but is not required to, establish prequalification procedures for any contract for which bids are required.

#### C. Unlicensed, Suspended and Debarred Contractors/Subcontractors

The LCER may not consider any contractor or subcontractor that does not possess a license in good standing, or is listed as debarred, suspended or otherwise excluded from bidding on, accepting, or performing any public works contracts, by the Division of Labor Standards Enforcement (“DLSE”) of the California Department of Industrial Relations (“DIR”).

The LCER is required to vet any potential contractor or subcontractor for suspension or debarment before a contract may be awarded. A list of suspended and debarred contractors and subcontractors may be accessed through the DLSE Debarments Web Site at <http://www.dir.ca.gov/dlse/debar.html>.

### Informal Bidding and Contract Approval – Contracts up to \$200,000

All purchases of more than \$50,001 but less than \$200,000 must include documentation of a good faith effort to secure the lowest possible cost for comparable goods or services of similar value. The CEO or designee shall not approve invoices, purchase orders, or check requests lacking such documentation. Documentation shall be attached to all invoices, purchase orders, and check requests indicating that at least three (3) contractors/vendors were contacted, and such documentation shall be maintained for three (3) years. Informal quotes or proposals for goods and/or services may be requested and received in writing by mail, email, facsimile, and/or verbally, such as by telephone, as long as properly documented.

Before releasing a bid solicitation, the CEO or designee will adopt a written method for conducting technical evaluations of the proposals received and for selecting recipients.

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the school, with price and other factors considered.

The LCER may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation (i.e., request for qualifications).

Contracts for purchases of up to \$200,000 may be executed by the CEO or designee without prior Board approval.

### **Formal Bidding and Contract Approval – Contracts Over \$200,001**

Contracts for the purchase of more than \$200,001 worth of equipment, materials or supplies to be furnished, sold, or leased to the LCER, or contracts for more than \$200,001 worth of services or construction (excluding those professional services agreements described in Guidelines for Selecting Contractors/Vendors), shall be subject to the formal bidding requirements set forth herein below. Use of formal bidding presumes that the following three factors are present (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price is not required. When any one or more of these three factors is not present, the LCER may find that formal bidding is not feasible and may use informal bidding (above) or noncompetitive proposal(s).

If formal bidding is required, the LCER shall utilize the following procedures:

#### **A. Seeking Bids**

The LCER shall seek bids from those sources able to offer the best prices, consistent with quality, quantity, delivery, and service. To ensure that good value is received for funds expended, the request for bids shall be carefully designed to clearly and completely describe in detail the quality, delivery, and service required, and shall include the criteria that will be used to evaluate the offers and the relative weights given to the criteria. Further, the request for bids shall specify the date by which all bids must be received by the LCER. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.

The request for bids must include a clear and accurate description of the technical requirements for the request, which defines the items or services with enough specificity to allow bidders to properly respond. These details can be provided in specifications and attachments included with the bid invitation. The bid request shall identify all requirements which the bidders must fulfill and all factors to be used in evaluating bids or proposals. Notice of the request for bids may be provided in one or more of the following ways:

- (1) Publishing the request for bids in at least one newspaper of general circulation within the boundaries of San Bernardino County, once a week for at least two (2) weeks before the deadline for receiving bids;
- (2) Posting the request for bids on the LCER's website or other electronic portal for at least two (2) weeks before the deadline for receiving bids; and/or
- (3) Directly submitting notice of the request for bids to an adequate number of qualified sources to permit reasonable competition consistent with the nature and purpose of this policy. Any list of potential contractors/vendors that is generated must be current and include enough qualified sources to ensure reasonable open and free competition.

B. Opening Bids

Bids may be opened only at the time and place prescribed by the CEO or designee. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. However, bidders retain the right to withdraw a bid due to a material mistake in the bid. After bids have been opened, they shall be available for inspection or copy by any interested party. The LCER must maintain the bid document(s) for the duration of the contract and for [Insert Number] (#) years beyond the completion of the contract.

C. Contract Award

The Board, or any employee of the LCER to whom responsibility has been delegated, shall award a competitively-bid contract at the bid amount to the bidder offering the best value to the LCER according to its selection criteria. The contract need not necessarily be awarded to the lowest responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. The selection criteria may include the following factors:

- (1) Purchase price;
- (2) Reputation of the contractor/vendor and of the contractor's/vendor's goods and/or services;
- (3) Quality of the contractor's/vendor's goods and/or services;
- (4) Extent to which the goods and/or services meet the LCER's needs;
- (5) Contractor's/vendor's record of past performance;
- (6) Contractor's/vendor's financial standing and capacity;
- (7) Contractor's/vendor's past relationship with the LCER; and
- (8) Total long-term cost to the LCER to acquire the goods and/or services.

All contracts must be approved by the CEO or designee.

Any and all bids may be rejected if there is a sound, documented reason for doing so.

#### D. Protest by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with this policy, the bid's specifications, or was not in compliance with law.

A protest must be filed in writing with the CEO or designee within five (5) business days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

The CEO or designee shall review the documents submitted with the bidder's claims and render a decision in writing within thirty (30) business days. The CEO or designee may also convene a meeting with the bidder to attempt to resolve the problem.

The bidder may appeal the CEO or designee's decision to the Board. The CEO or designee shall provide reasonable notice to the bidder of the time for Board consideration of the contract award. The Board's decision shall be final.

#### **Noncompetitive Proposals**

A noncompetitive procurement proposal is the solicitation of a proposal from only one (1) source. Noncompetitive procurement proposals may only be used when one or more of the following circumstances apply: (i) the item is available only from a single source; (ii) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or (iii) after solicitation of a number of sources, competition is determined inadequate. When procuring goods or services using Federal funds, if none of these circumstances are present, written authorization from the Federal awarding agency or CDE must be granted.

#### **Construction Contracts**

Procurement of construction and/or construction related services must be made in accordance with the bidding procedures described herein. Additionally, the LCER must comply with the prevailing wage laws applicable to certain construction and/or services that constitute a "public works" project as defined under the Labor Code. (Labor Code §§ 1720, 1720.2, and 1720.3.)

A "public works" project is defined as "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" and includes "work performed during the design and preconstruction phases of construction" (e.g., surveying) as well as "post construction" work (i.e., cleanup). (Labor Code § 1720(a)(1).)

An outline of the additional requirements applicable to public works projects are further described in Public Works Projects and Prevailing Wage Requirements.

#### **Public Works Projects and Prevailing Wage Requirements**

## A. Mandatory Public Works Project Request for Bids Terms and Specifications

A Public Works Project, in definition of this regulation, is identified as a project funded by a Tax-Exempt Bond issued in expectation for new capital improvements in accordance with AB 2765. All requests for bids (or the “call for bids”) and bid specifications for construction and/or services, which constitute a “public works” project (i.e., a “Project”), issued and published by the LCER, must contain the following terms and specifications when applicable:

- (1) **General Project Description as Public Work:** In the call for bids, the LCER must provide a general description of the work required for the Project and state that “the Project is classified as a ‘public work,’ as defined in Labor Code Section 1720, to which not less than the general prevailing rate of per diem wages for work of a similar character and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract shall be paid to all workers employed on the Project in accordance with Labor Code Section 1771.”
  - (2) **Bid Closing Date:** The LCER must also specify in the call for bids the place the contractor’s bids are to be received, and the time by which they shall be received.
  - (3) **Prevailing Wage Rate:** The LCER is required to specify in the call for bids and in the bid specifications the general rate of per diem wages as described in Section (A)(1) above. (Labor Code § 1773.2.) The general prevailing wage rate must be obtained from the Director of the DIR. The applicable general prevailing wage rates for any such public works project are available on the DIR website at <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>.
- In lieu of specifying the rate of wages, the LCER may include a statement in the call for bids and in the bid specifications that “copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested part on request.” (Labor Code § 1773.2.)
- (4) **Notice of DIR Enforcement:** The LCER shall specify in the call for bids that the Project is “subject to compliance monitoring and enforcement by the Department of Industrial Relations.” (Labor Code § 1771.4(a)(1).)
  - (5) **Registered Contractor Notice:** The LCER shall provide notice in the call for bids that “a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5.” The LCER shall not accept a bid or enter into a contract or subcontract without proof of the contractor or subcontractor’s current registration to perform public work pursuant to Section 1725.5. (Labor Code § 1771.1.)
  - (6) **Contractor/Vendor Bids:** The LCER shall require all contractor/vendor bids to expressly state that the contractor/vendor “will pay its workers the applicable prevailing wage rate in accordance with Labor Code Sections 1771 and 1774.”

## B. Mandatory Public Works Project Contract Terms

All contracts for construction and/or services that constitute a “public works” project (“Project”) entered into with the LCER must contain the following terms and provisions when applicable:

(1) **General Project Description as Public Work:** The LCER must provide a general description of the work required for the Project and specify in the Project Contract that “the Project is classified as a ‘public work,’ as defined in Labor Code Section 1720, to which not less than the general prevailing rate of per diem wages for work of a similar character and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract shall be paid to all workers employed on the Project in accordance with Labor Code Section 1771.”

(2) **Prevailing Wage Rate:** The LCER is required to specify in the Project Contract the general rate of per diem wages as described in Section (B)(1) above. (Labor Code § 1773.2.) The general prevailing wage rate must be obtained from the Director of the DIR. The applicable general prevailing wage rates for any such public works project are available on the DIR Wage Determination website at <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>. In lieu of specifying the rate of wages, the LCER may include a statement in the Project Contract that “copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party on request.” (Labor Code § 1773.2.)

(3) **Compensation Provision:** The LCER shall include a clause in the Project Contract that states, “In accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his or her employees.” (Labor Code § 1860.)

(4) **Penalty Stipulation:** The LCER shall also include a stipulation in the Project Contract that notifies the contractor that the contractor or subcontractor will be subject to a penalty of twenty-five dollars (\$25) for each calendar day a worker employed in the execution of the Contract is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week without payment of the applicable overtime rate of pay. (Labor Code § 1813.)

(5) **Underpayment of Prevailing Wage:** The Project Contract must include a stipulation that states, “The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor in accordance with Section 1775 of the Labor Code.” (Labor Code § 1775(a)(2)(E).)

(6) **Apprenticeship Requirement:** The LCER must also include a provision in the Project Contract that effectuates Labor Code Section 1777.5, which requires the contractor to employ properly registered apprentices for the Project. Specifically, the contractual provision must fix the responsibility of compliance with the apprenticeship requirements under Section 1777.5 for all apprenticeable occupations with the prime contractor on the Project. (Labor Code § 1777.5(n).)

(7) **8-Hour Work Day:** The Project Contract shall also include a clause establishing that “Eight hours’ labor constitutes a legal day’s work.” (Labor Code § 1810.)

(8) Payroll Record Contract Provisions: The LCER shall include a stipulation in the Project Contract effectuating Labor Code Section 1776, which requires the contractor to maintain accurate certified payroll records that include the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each apprentice, worker, or other employee of the contractor in connection with the public work, and a written declaration of the employee verifying the truth of the payroll record. (Labor Code § 1776.)

The LCER must designate the times the contractor and subcontractor are required to furnish the payroll records to the Compliance Monitoring Unit (“CMU”) of the DIR. (8 CCR § 16461(b).) The Project Contract shall specify that “the contractor and each subcontractor shall furnish the payroll record of wages paid as specified in Section 1776 directly to the Compliance Monitoring Unit (“CMU”) of the DIR on a monthly basis until the completion of the Project, or within 10 days of any separate request by the CMU.” (8 CCR § 16461(b).)

Further, the Project Contract must include a provision stating, “Contract payments shall not be made when payroll records are delinquent or inadequate.” (8 CCR § 16421(a)(6).)

### **Mandatory Contract Terms**

All contracts entered into with the LCER must contain the following terms when applicable:

- (1) A ceiling price that the contractor/vendor exceeds at its own risk.
- (2) Retention of all required records by the contractor/vendor for three (3) years after the LCER makes final payments and all other pending matters are closed.
- (3) Access by the LCER or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (4) Administrative, contractual, or legal remedies in instances where contractors/vendors violate or breach contract terms, and the sanctions and penalties that are appropriate.
- (5) Termination for cause and for convenience by the LCER, including the manner by which it will be effected and the basis for settlement.

### **Conflict of Interest**

No Board member or LCER employee shall be financially interested in any contract made by the Board or in any contract made in their capacity as a Board member or LCER employee.

No Board member or LCER employee shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the Board member or LCER employee, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ the Board member or LCER employee, has a financial or other interest in the firm selected for an award. The Board member or LCER employee shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements.

To the extent permitted by law, any Board member or LCER employee who violates this section may be subject to penalties, sanctions, and other disciplinary actions.

### **Reservation**

The LCER Procurement and Contract Bidding Policy shall be amended and updated if necessary to comply with changes in acceptable procurement practices.

### **Federal Grants or Programs**

In addition to complying with all conditions herein, all contracts involving federal grants or other federal programs shall also fully comply with all applicable federal procurement guidelines related to such programs and the Uniform Guidance of the Office of Management and Budget (2 CFR §§ 200.218-200.226). In the event there is a conflict between this policy and the applicable federal procurement guidelines, the federal guidelines shall prevail.