

Dominic Machi

From: Rose Garcia <rosegarcia@husd.k12.ca.us>
Sent: Tuesday, June 4, 2019 7:00 PM
To: Dominic Machi
Cc: Elizabeth Mc Clanahan; Thomas Egan III
Subject: RE: Hayward Unified Food Service Bid - Sysco

Hi Dominic,
Yes, it is doable.

Just an FYI - a piggyback clause is not required by PCC. PCC20118 simply allows “ if there is an existing contract between a public corporation or agency and a vendor for the lease or purchase of the personal property, a school district may authorize the lease or purchase of personal property directly from the vendor by contract, lease, requisition, or purchase order and make payment to the vendor under the same terms that are available to the public corporation or agency under the contract.”

That being said, the Hayward Unified School District has no objection and is happy to allow Mount Diablo Unified School District to piggyback on our contract awarded to Sysco SF for 19.103 Food Products.

Please let me know if there is anything more I can do for you.

Hayward Unified School District

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Purchasing Manager, Purchasing Department

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Made in
Hayward

From: Dominic Machi [mailto:machid@mdusd.org]
Sent: Tuesday, June 04, 2019 4:30 PM
To: 'rosegarcia@husd.k12.ca.us' <rosegarcia@husd.k12.ca.us>
Cc: Elizabeth Mc Clanahan <mcclanahane@mdusd.org>; Thomas Egan III <egant@mdusd.org>
Subject: Hayward Unified Food Service Bid - Sysco

Hi Rose,

My name is Dominic Machi and I am the Director of Food & Nutrition Services for the Mt. Diablo Unified School District. Previously, we had received word that your Food Services Department was okay if we were to “piggyback” on the

Hayward Unified Food Service Bid, which the distributor Sysco, won the bid. Is this okay with you? I did not see a piggyback clause on the bid but is it possible to send a letter that states we are approved to piggyback on the bid? We are having a difficult time with our present distributor and this will help us out considerably. Please let me know if this is doable and we so appreciate your help. Let me know if you have any questions. Talk soon.

Dominic

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PUBLIC CONTRACT CODE - PCC

DIVISION 2. GENERAL PROVISIONS [1100 - 22355] (*Division 2 enacted by Stats. 1981, Ch. 306.*)

PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178] (*Part 3 added by Stats. 1982, Ch. 465, Sec. 11.*)

CHAPTER 1. Local Agency Public Construction Act [20100 - 20929] (*Chapter 1 added by Stats. 1982, Ch. 465, Sec. 11.*)

ARTICLE 3. School Districts [20110 - 20118.4] (*Heading of Article 3 amended by Stats. 1984, Ch. 1128, Sec. 7.*)

20110. The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code.
(*Added by Stats. 1982, Ch. 465, Sec. 11.*)

20111. (a) (1) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars (\$50,000) for any of the following:

- (A) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
- (B) Services, except construction services.

(C) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

(2) The governing board shall let the contract to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) (1) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover, and shall be accompanied by one of the following forms of bidder's security:

- (A) Cash.
- (B) A cashier's check made payable to the school district.
- (C) A certified check made payable to the school district.
- (D) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

(2) Upon award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) Procurement bid solicitations and awards made by a school district approved to operate at least one federal nonprofit child nutrition program for purchases in support of those programs shall be consistent with the federal procurement standards in Sections 200.318 to 200.326, inclusive, of Part 200 of Title 2 of the Code of Federal Regulations. These awards shall be let to the most responsive and responsible party. The price shall be the primary consideration, but not the only determining factor.

(d) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(e) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price

Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2017, Ch. 395, Sec. 1. (SB 544) Effective January 1, 2018.)

20111.5. (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

(b) Any school district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed qualified to bid.

(c) Each prospective bidder on any contract described under Section 20111 shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(d) A proposal form required pursuant to subdivision (c) shall not be accepted from any person or other entity who is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but has not done so at least five days prior to the date fixed for the public opening of sealed bids or has not been prequalified, pursuant to subdivision (b), for at least one day prior to that date.

(e) Notwithstanding subdivision (d), any school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and may authorize that prequalification to be considered valid for up to one calendar year following the date of initial prequalification.

(Amended by Stats. 1997, Ch. 390, Sec. 5. Effective August 27, 1997.)

20111.6. (a) This section applies only to public projects, as defined in subdivision (c) of Section 22002, for which the governing board of the school district uses funds received pursuant to the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code) or any funds received, including funds reimbursed, from any future state school bond for a public project that involves a projected expenditure of one million dollars (\$1,000,000) or more.

(b) If the governing board of the school district enters into a contract meeting the criteria of subdivision (a), then the governing board of the school district shall require that prospective bidders for a construction contract complete and submit to the governing board of the school district a standardized prequalification questionnaire and financial statement. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements are not public records and shall not be open to public inspection.

(c) The governing board of the school district shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements. This system shall also apply to a person, firm, or corporation that constructs a building described in Section 17406 or 17407 of the Education Code.

(d) The questionnaire and financial statement described in subdivision (b), and the uniform system of rating bidders described in subdivision (c), shall cover, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations pursuant to subdivision (a) of Section 20101.

(e) Each prospective bidder shall be furnished by the school district letting the contract with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be disregarded.

(f) A proposal form required pursuant to subdivision (e) shall not be accepted from any person or other entity that is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (b) or from any person or other entity that uses a subcontractor that is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (b), but has not done so at least 10 business days before the date fixed for the public opening of sealed bids or has not been prequalified for at least five business days before that date. The school district may require the completed questionnaire and financial statement for prequalification to be submitted more than 10 business days before the fixed date for the public

opening of sealed bids. The school district may also require the prequalification more than five business days before the fixed date.

(g) (1) The governing board of the school district may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly or annual basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(2) The governing board of the school district shall establish a process to prequalify a person, firm, or corporation, including, but not limited to, the prime contractor and, if used, an electrical, mechanical, and plumbing subcontractor, to construct a building described in Section 17406 or 17407 of the Education Code on a quarterly or annual basis. A prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(h) This section does not preclude the governing board of the school district from prequalifying or disqualifying a subcontractor of any specialty classification described in Section 7058 of the Business and Professions Code.

(i) For purposes of this section, bidders shall include both of the following:

(1) A prime contractor, as defined in Section 4113, that is either of the following:

(A) A general engineering contractor described in Section 7056 of the Business and Professions Code.

(B) A general building contractor described in Section 7057 of the Business and Professions Code.

(2) If utilized, each electrical, mechanical, and plumbing contractor, whether as a prime contractor or as a subcontractor, as defined in Section 4113.

(j) If a public project covered by this section includes electrical, mechanical, or plumbing components that will be performed by electrical, mechanical, or plumbing contractors, a list of prequalified general contractors and electrical, mechanical, and plumbing subcontractors shall be made available by the school district to all bidders at least five business days before the dates fixed for the public opening of sealed bids. The school district may require the list to be made available more than five business days before the fixed dates for the public opening of sealed bids.

(k) For purposes of this section, electrical, mechanical, and plumbing subcontractors are contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and C-46 licenses, pursuant to regulations of the Contractors' State License Board.

(l) This section does not apply to a school district with an average daily attendance of less than 2,500.

(m) (1) This section applies only to contracts awarded on or after January 1, 2014.

(2) The amendments made to this section by Chapter 408 of the Statutes of 2014 apply only to contracts awarded on or after January 1, 2015.

(Amended by Stats. 2018, Ch. 534, Sec. 1. (AB 2031) Effective January 1, 2019.)

20112. For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The governing board of the district may accept a bid that was submitted either electronically or on paper.

(Amended by Stats. 2004, Ch. 739, Sec. 1. Effective January 1, 2005.)

20113. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20114, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

(Amended by Stats. 1995, Ch. 897, Sec. 2. Effective January 1, 1996.)

20114. (a) In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20115 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20115, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of material does not exceed twenty-one thousand dollars (\$21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

(Amended by Stats. 1995, Ch. 897, Sec. 3. Effective January 1, 1996.)

20115. For purposes of Section 20114, "maintenance" means routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craftwork designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of Section 20114.

(Added by Stats. 1982, Ch. 465, Sec. 11.)

20116. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California School Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.

(Amended by Stats. 1995, Ch. 897, Sec. 4. Effective January 1, 1996.)

20117. Notwithstanding any other provision of law, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to a school district for the purchase, sale, or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the governing board of any school district may determine by lot which bid shall be accepted.

(Added by Stats. 1987, Ch. 1452, Sec. 527.)

20118. Notwithstanding Sections 20111 and 20112, the governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor. Upon receipt of the personal property, if the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase

of the personal property, or the school district may make payment directly to the vendor. Alternatively, if there is an existing contract between a public corporation or agency and a vendor for the lease or purchase of the personal property, a school district may authorize the lease or purchase of personal property directly from the vendor by contract, lease, requisition, or purchase order and make payment to the vendor under the same terms that are available to the public corporation or agency under the contract.

(Amended by Stats. 2006, Ch. 730, Sec. 19.75. Effective January 1, 2007.)

20118.1. The governing board of any school district may contract with an acceptable party who is one of the three lowest responsible bidders for the procurement or maintenance, or both, of electronic data-processing systems and supporting software in any manner the board deems appropriate.

(Added by Stats. 1987, Ch. 1452, Sec. 529.)

20118.2. (a) Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, because products and materials of that nature are undergoing rapid technological changes, and in order to allow for the introduction of new technological changes into the operations of the school district, it is in the public's best interest to allow a school district to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services.

(b) This section applies only to a school district's procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This section does not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public.

(c) Notwithstanding Section 20118.1, a school district may, after a finding is made by the governing board that a particular procurement qualifies under subdivision (b), authorize the procurement of the product through competitive negotiation as described in subdivision (d).

(d) For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

(1) A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the school district, to permit reasonable competition consistent with the nature and requirement of the procurement.

(2) Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.

(3) The school district shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

(4) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(5) The school district shall provide reasonable procedures for the technical evaluation of the proposals received, the identification of qualified sources, and the selection for the award of the contract.

(6) Award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the school district with price and all other factors considered.

(7) If award is not made to the bidder whose proposal contains the lowest price, the school district shall make a finding setting forth the basis for the award.

(e) The school district, at its discretion, may reject all proposals and request new proposals.

(f) Provisions in any contract concerning utilization of small business enterprises, that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

(Added by Stats. 2005, Ch. 509, Sec. 1. Effective January 1, 2006.)

20118.3. The governing board of any school district may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

This section shall become operative January 1, 1989, and is declaratory of existing law and practice.

(Amended by Stats. 1990, Ch. 439, Sec. 1.)

20118.4. (a) If any change or alteration of a contract governed by Article 3 (commencing with Section 17595) of Chapter 5 of Part 10.5 of the Education Code is ordered by the governing board of the district, the change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration, without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the following:

- (1) The amount specified in Section 20111 or 20114, whichever is applicable to the original contract.
- (2) Ten percent of the original contract price.

(b) The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year, may also authorize any change or alteration of a contract for reconstruction or rehabilitation work, other than for the construction of new buildings or other new structures, if the cost of the change or alteration is in excess of the limitations in paragraphs (1) and (2) of subdivision (a) but does not exceed 25 percent of the original contract price, without the formality of securing bids, and the change or alteration is a necessary and integral part of the work under the contract and the taking of bids would delay the completion of the contract. Changes exceeding 15 percent of the original contract price shall be approved by an affirmative vote of not less than 75 percent of the members of the governing board.

(Amended by Stats. 2006, Ch. 538, Sec. 540. Effective January 1, 2007.)