



County School Facilities Consortium 2021 Virtual Annual Summit

September 23-24, 2021

Overview of Alternative Contracting Methods

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Overview

Shawn A. VanWagenen is Senior Counsel in Lozano Smith's Fresno office and serves as co-chair of the firm's Facilities and Business Practice Group. As a native of California's Central Valley, Mr. VanWagenen provides general counsel to school districts and cities as an active member of the Firm's Local Government and Facilities & Business practice groups. Mr. VanWagenen works closely with clients to appreciate their organizations, culture and goals, so Lozano Smith can support administrators in developing the right solution for each legal issue.

Experience

Mr. VanWagenen assists school districts in a variety of areas, including:

- Real property issues
- Contract development review and negotiation
- Land use and zoning
- Sale and lease transactions
- Construction
- CEQA matters
- Brown Act and Public Records Act
- Effective Board Governance
- Charter Schools

Presenter Experience

Mr. VanWagenen has presented at various events including the Coalition for Adequate School Housing (CASH) annual conference, California Association of School Business Officials (CASBO) regional workshop series, trainings hosted by county offices of education, and Lozano Smith's Facilities & Business webinars. He also conducts regular client trainings on general board governance, the Brown Act, contracting, real property transactions, public works projects, and charter schools.

Education

Mr. VanWagenen received his Juris Doctor from University of the Pacific, McGeorge School of Law. He earned a Bachelor of Arts in Spanish with a minor in Business Management from Brigham Young University.

Professional Affiliations

Mr. VanWagenen is a member of the State Bar of California and is admitted to the Eastern District of California.

WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, San Luis Obispo, Los Angeles, and San Diego.

AREAS OF EXPERTISE

- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

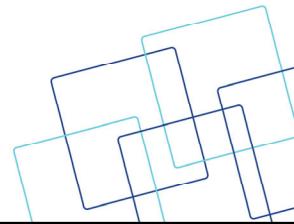
DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.



Overview of Alternative Contracting Methods: Alternatives to Competitive Bidding

Presented by: Shawn A. VanWagenen, Lozano Smith

2021 CSFC Annual Conference
September 24, 2021



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Presenter

Shawn A. VanWagenen

AT LOZANO SMITH

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Topics

The General Rule: Competitive Bidding

Alternative Contracting Methods

- Goods & Services
- Professional Services
- Piggyback and CMAS
- CUPCCAA
- Alternative Delivery Methods
- Exceptions to Competitive Bidding on Public Works Projects

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The General Rule: Competitive Bidding

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Public Contracts



Competitive Bidding:

Award contract to the lowest responsive bid from a responsible bidder or reject all bids.



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Formal Competitive Bidding Process

Publication

Pre-Bid
Meeting

Acceptance
of Bids

Withdrawal
of Bids

Award or
Reject



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Construction Pre-Bidding Requirements

Prequalification of
Bidders

Registration with
Department of
Industrial Relations
(DIR)



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Is a County Office of Education a “School District”



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...

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Alternative Contracting Methods

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Goods and Services

Bid Threshold for Competitively Bid Contracts:
>\$96,700

Public Contract Code section 20111(a)

- Equipment, materials, supplies
- Services except construction services
- Repairs, including maintenance



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Goods and Services

Exceptions to Competitive Bidding for Goods and Services

- Professional and Special Services
- Construction-Related Services
- Technology Purchases
- Piggyback/CMAS



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Bidding Exceptions - Professional and Special Services

“[Bidding requirements] shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section . . .”

(Public Cont. Code, § 20111(d))

“The legislative body of any public district may contract with any person for furnishing the [district] special services and advice in financial, economic, accounting, engineering, legal or administrative matters if such persons are specially trained and experienced and competent to perform such special services required.”

(Gov. Code, § 53060)

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Construction Related Services



Applies to selection of:

- Architects
- Landscape Architects
- Engineering Services
- Environmental Consultants
- Land Surveyor
- Construction Management Firms



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Bidding Exception- Electronic Data Processing Systems



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Bidding Exception- Computers, Software, Telecommunications Equipment, Other Equipment



Public Contract
Code § 20118.2



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Bidding Exception- Piggyback and California Multiple Award Schedule (CMAS)

Another exception to
competitive bidding:

Piggyback (20118)

CMAS (10290 – 10299, 12101.5)

<https://www.dgsapps.dgs.ca.gov/PD/CMASSearch/>



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Other Bidding Exceptions

- Supplementary textbooks, library books, educational films, A/V materials, test materials, workbooks, instructional computer software packages, or periodicals. PCC 20118.3
- Perishable foodstuff and seasonal commodities to operate cafeterias. Ed. Code 38083
- Surplus property from the federal government. Ed. Code 17602
- Public policy exception.

Proceed with caution if federal funds are used as there may not be an equivalent exception!



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California Uniform Public Construction Cost Accounting Act

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CUPCCAA

How is it implemented?

- Board approval by resolution to being subject to CUPCCAA procedures
- File resolution with Controller
- Board establishes informal bidding procedures/policies.
- Establish list of contractors to be notified of potential projects



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California Uniform Public Construction Cost Accounting

There are different steps depending on the value of the project.

No Bid: \$60,000 or less

Informal Bids: \$200,000 or less

Formal Bids: Over \$200,000



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California Uniform Public Construction Cost Accounting



- Board must adopt a Resolution and notify the State Controller.
- The public agency must compile a list of contractors.
- The Board may delegate authority to award informal contracts.
- Accounting procedures will be subject to review.

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CUPCCAA and Emergency Contracts

- May proceed by day labor or by contractor or combination of the two without bid.
- May negotiate directly if no bids are received.
- Board delegation and duty for ongoing reporting.
- Board approves emergency contract and evidence of emergency by 4/5 vote, not unanimous.

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Exceptions to Competitive Bidding on Public Works Projects

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Alternate Delivery Methods

Lease
leaseback

CM Multi-
Prime

Design-Build



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Emergency Projects

- Emergency situations where a sudden occurrence takes place, and is either a threat to public safety or to continuation of existing classes, may be exempt to bidding.
- Requires unanimous Board approval and consent from the County Superintendent of Schools*



*CUPCCAA districts need only approval by a supermajority of the Board. No consent from the County Superintendent of Schools is required by statute.



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Other Exceptions to Competitive Bidding

- Energy service contract (GC §4217.12)
- Job order contracting (PCC §§20919.20 et seq.)
- Public policy (*Graydon* case)
- Public-private partnership (GC §§5956 et seq.)



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Can a Piggyback be Used for Public Works?



- Piggybacks are intended to purchase “data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property” – not services.
- There is some support for “incidental” services, generally interpreted to be limited to 10% of the total value (*Steelgard v. Janseen*)
- Be very cautious when using a piggyback to purchase a portable or modular building in light of the OPSC mass email dated July 7, 2021!



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What About CMAS Use for Public Works ?

- CMAS is only intended to “contract for goods, information technology, or services with suppliers” - public works are not authorized.
- Although not binding law, the CMAS Local Government Agency Guide (Dec. 2017) states that “[t]he total dollar value of all public works services included in the purchase order must not exceed the dollar value of the products.
- Other public works still apply (e.g., bonds, prevailing wage, license, DIR registration, etc.)
- Proceed with caution if public works is included.



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For more information, questions and comments about the presentation, please feel free to contact:

Shawn VanWagenen

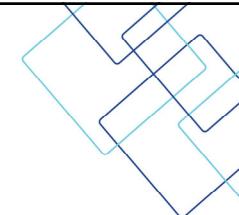
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