

**STATE OF CALIFORNIA  
BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

RESOLUTION No. 92-04B-2

Subject: Contracts & Procurement of  
Goods and Services  
Exemptions from Competitive Bidding

WHEREAS, On March 17, 1993, the Board of Administration of the California Public Employees' Retirement System passed Resolution No. 92-04B-1, describing CalPERS' policies regarding contracts for goods and services;

WHEREAS, Resolutions No. 92-04B-1 requires that CalPERS contracts for goods and/or services be awarded after a competitive bidding process, except inter alia, when the contract meets the Board's criteria concerning exemptions from competitive bidding;

WHEREAS, On April 19, 1995, the Board of Administration of the California Public Employees' Retirement System passed Resolution No. 92-04B-2, determining that the existing Procedures for exemptions from competitive bidding under "unique circumstances" should more specifically define those circumstances in which CalPERS' Chief Executive Officer may approve a contract award without competitive bidding.

WHEREAS, The Public Contract Code generally permits contracts to be awarded by state agencies, without competitive bidding, under five circumstances:

1. In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of State property.
2. When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential and known contractors but has received less than three bids or proposals.
3. The contract is with another state agency or local governmental entity.
4. The contracts meet the specifications of the rules and regulations adopted by the Department of General Services (DGS), and contained within the State Administrative Manual (SAM). These specifications include:
  - A. Where DGS has agreed that there is a **single source** for the services, or
  - B. Where DGS determines that the **State's interests** are **better served** by an exemption from competitive bidding.

(See PCC sec 10348, State Contract Manual 5.70)

WHEREAS, Existing CalPERS' contracting procedures (Contract Management Procedures, pages 5-100.31 and 5-100.32, and published on October 7, 1993) permit contracts to be awarded without "a formal bid process" under "unusual circumstances",

WHEREAS, The existing Procedures list several examples of potential "unique circumstances":

"...where there is only a single source for the goods/services, or the Board has determined that CalPERS' best interests are better served without a formal bid process, or in other situations such as in the purchase of proprietary software."

WHEREAS, In all cases, the existing Procedures also require that the costs of the contract be reasonable; that the contract be approved by defined management levels (depending on the value of the contract); and that approval only be granted upon a written and comprehensive justification, describing background, critical timeframes, survey of the marketplace (to identify other potential providers of the service), qualifications and/or special expertise of the selected firm, and reasonableness of fee/costs; and

WHEREAS, The Board has determined that the existing Procedures for exemptions from competitive bidding under "unique circumstances" should be narrowed, to more specifically define those circumstances in which CalPERS' Chief Executive Officer may approve a contract award without competitive bidding.

RESOLVED, That CalPERS' contracting procedures at page 5-100.31, titled SOLE SOURCE CONTRACTS, shall be retitled and the first two paragraphs shall be replaced with the following:

EXEMPTION FROM COMPETITIVE BIDDING

- A. The best interests of CalPERS' members and beneficiaries will most often be met by following a competitive bidding process, which process provides not only reasonable cost but also fair and equal access to CalPERS' business.
- B. These best interests will not be met, however, when, because of the time or appropriateness of a competitive bidding process, the Board will be unable to (a) meet its principal duty to ensure prompt delivery of benefits and related services to its members and beneficiaries, or (b) act as would a prudent and informed investor, in like circumstances and with like aims.
- C. The Board, and its delegates, have the responsibility to plan, project and act prudently, so as to provide, when possible, sufficient time to utilize competitive bidding; lack of reasonable planning on the part of the Board or its delegates will not be grounds to permit an exemption from competitive bidding.

- D. When, under the circumstances described in B above, an exemption from competitive bidding is necessary to meet the Board's fiduciary duties, no contract may be awarded without appropriate demonstration that (1) the contractor can competently and expeditiously provide the required goods and/or services, and (2) the contract's compensation is reasonable.

Pursuant to the above, an exemption from competitive bidding where there is but a single source or where CalPERS' interests are better served by an exemption will be available only in the following circumstances:

- (1) Only one contractor can perform the specific services or provide the goods sought;

OR

- (2) (a) A "critical timeframe" exists; and  
 (b) There is a current contractor that can competently and expeditiously perform the service or provide the goods; and  
 (c) The current contractor can do so at a reasonable fee.

OR

- (3) (a) The work to be performed is extremely sensitive; and  
 (b) The work involves critical timeframes; and  
 (c) Failed performance of the work would result in dire consequences to the System; and  
 (d) There is a known entity that is capable of performing the work correctly and expeditiously; and  
 (e) The known entity can perform the work for a reasonable fee.

OR

- (4) (a) A "critical time frame" exists; and  
 (b) There is an entity that, based upon a previous relationship with CalPERS, can competently and expeditiously perform the service or provide the goods; and  
 (c) The entity can do so at a reasonable fee.

OR

- (5) The Board or Chief Executive Officer has determined that a new or current contractor can competently and expeditiously provide the specific services; and can do so at a reasonable fee; and that the selection is based on a CalPERS' best business practice decision. If the Chief Executive Officer determines that the Board should be the decision-maker, the request will be forwarded to the appropriate committee.

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No contract exempted from competitive bidding pursuant to these provisions can be for a period greater than five (5) years, without express Board approval.

RESOLVED, that the Board hereby delegates to its Chief Executive Officer the authority and responsibility to implement the revisions and activities described above, provided such actions are regularly reported to the Board.

RESOLVED, that this Resolution shall be effective immediately upon adoption, and is cumulative to all other delegations to the Chief Executive Officer.

I hereby certify that on the 13<sup>th</sup> day of April, 2011, the Board of Administration of the California Public Employees' Retirement System made and adopted the foregoing Resolution.

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ROB FECKNER, President  
CalPERS Board of Administration

I understand and accept this delegation.

Dated: June 3, 2011

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ANNE STAUSBOLL  
Chief Executive Officer