

Proposition 39 Contracting Fact Sheet
Requirement Prohibiting Sole-Source Award
December 12, 2013

SB 73 mandates a variety of requirements for the administration of Proposition 39 funds for job creation and energy efficiency projects. One of the more controversial requirements concerns the prohibition of “sole source contracting”, discussed on pages 21-22 of the Proposition 39 Implementation Guidelines and as stated in Section 26235 (c) of SB 73:

“A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college district or LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter.”

It is also important to note that “Best Value” is defined in Public Contract Code 20133(c)(1) as:

"Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs."

To fully comply with that “Best Value” criteria and the prohibition against sole source contracting when utilizing their Prop 39 funds, a District will need to engage in a two-step process that accomplishes the following:

1. Request for Qualifications (RFQ): Pre-qualifies energy project contractors based on several criteria including energy project history, team member qualifications, firm financial viability, and experience working with Community Colleges, **AND**
2. Request for Proposals (RFP): Identifies and evaluates the specific project workscope, schedule, and other requirements where multiple contractors (at least two, three would be better) submit proposals for District evaluation and consideration. Typically, the RFP should include the following elements and respondent submittal requirements:
 - Proposed workscope
 - Request price and life-cycle economics
 - Technical proposal and identification of specific equipment to be installed
 - Energy savings
 - Project approach
 - Schedule
 - Exceptions

The Proposition 39 Guidelines require that contracts identify the project specifications, costs, and projected energy savings for projects implemented. Proposition 39 defers to local contracting practices as long as the prohibition of sole source contracts and all applicable law related to contractor qualifications, licensing, and certification requirements related to the project are met. ***Government Code 4217 can be used as a contracting vehicle ONLY if the above criteria are met.***

It is important that Districts comply with ALL requirements of the Prop 39 program to ensure our system’s mutual success and to ensure future years funding. A comprehensive RFQ/RFP evaluation process should always be used when implementing Proposition 39 funded projects. This process can either be combined into a single solicitation, or can use a two-step, separate RFQ & RFP process.

In all cases, it is recommended that each District should confer with their own legal counsel on meeting these requirements.