Note: If you are doing one of the 4 ways of hard bidding in CA Public Contract Code section 20103.8, you are typically clean as a whistle and good to go.

If you are not doing that, you are likely doing an exception to the hard bid rule in CA and should identify which specific exception you are invoking, (and yes, CUPCCAA is an exception), and *keep record of it in the procurement file*.

Here is a form with potential exceptions that can be used to identify why something was not bid in CA. This is only a starting point for discussion with your legal counsel. Your experiences with your legal counsel and changes in law and court cases will likely cause modifications to this form.
Create your own living form!

# **Bid Exception and Explanation Form**

General description of work, product(s) or services being acquired

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**Anticipated or estimated cost of the work, product(s) or services: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Please check the competitive bidding exception relied upon:**

Public Construction Contract

[ ]  Project estimate is at or under $15,000 [or the CUPCCAA threshold of $60,000 (as of *1/1/22*)]

[ ]  CMAS contract [may only include “incidental work or service” in addition to the items being purchased] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss proper confirmation and board actions needed to use a specific multiple-award contract*

[ ]  Emergency contract (Public Contract Code §§ 20113, 22035 and 22050) – *contact legal counsel to discuss project specifics if you believe this is applicable*

[ ]  No advantage to bidding – *contact legal counsel to discuss specific circumstances*

[ ]  Sole source contractor – (Public Contract Code §3400) *verify conformance to regulations with legal counsel*

[ ]  Completion contract – *contact legal counsel to discuss appropriate documentation*

[ ]  Lease-leaseback contract RFP process (Education Code §17406)

[ ]  Design-build contract RFP process (Education Code §17250)

[ ]  Job order contract using existing JOC bid (Public Contract Code §§20919.20 et. Seq.)

[ ]  Best value (Public Contract Code §20119 – LAUSD pilot program)

[ ]  Energy & Conservation contract RFQ (GC §4217.12/15814.10 & EC § 81660; ED §17595, PCC §20188, 20652, GC §14931; PCC § 10290-10299 & 12100) *contact legal counsel to discuss if applicable*

[ ]  Technology/Telecommunications, related equipment, software & services RFQ/P (Public Contract Code §20118.2)

[ ]  Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ – *contact legal counsel to discuss*

Maintenance Contract

[ ]  Repairs, including maintenance (PCC §20115 & 20114(a)(3)) **not** public construction (PCC §22002(d)) and price is at or under bid threshold of $99,100 (as of 1/1/22) [If CUPCCAA make sure the resolution joining CUPCCAA excluded maintenance work. Otherwise, the limit is $60,000]

[ ]  No advantage to bidding (including sole source) – *contact legal counsel to discuss specifics*

[ ]  Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ – *contact legal counsel to discuss*

Consultant Contract:

[ ]  Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §§4525, *et seq.*)

[ ]  Architect, landscape architect, or engineering – selected based on demonstrated competence and professional qualifications (Government Code §§4525, *et seq.*) Note: If project is fully or partially funded by State bond funds, see also the Grant Agreement for process and documentation requirements.

[ ]  Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if unsure*

[ ]  For services other above and other than construction services, the cost of services is $99,100 or less (as of 1/1/22) – (Public Contract Code §20111(d))

[ ]  No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

[ ]  Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ – *contact legal counsel to discuss*

Equipment/Materials/Supplies/services Contract

[ ]  Price is at or under bid threshold of $99,100 (as of 1/1/22) – (Public Contract Code §20111(d)) Applies only to: Equipment, materials or supplies furnished, sold or leased to district; Services, except construction services; Repairs, including maintenance{see above for maintenance work} (PCC §20115) except public construction (PCC §22002)

[ ]  Certain instructional materials (Public Contract Code §20118.3)

[ ]  Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

[ ]  Electronic equipment – competitive negotiation (Public Contract Code §20118.2)

[ ]  CMAS contract [may only include “incidental work or service” in addition to the item(s) being purchased] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel and your county office to discuss definition of “incidental” for installation*

[ ]  Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*

[ ]  Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*

[ ]  No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

[ ]  Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ – *contact legal counsel to discuss*

Explain in detail the facts that support the applicability of the
exception marked above

*Example: Architect Services non-state funded - Vendor will be selected through a Competitive RFQ process. We are opting to publicly advertise the RFQ. Submissions will be rated by a panel of 3 people and awardee will be selected based on their ranked professional and qualifications to service the district in this specified field as shown in the RFQ.*

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