



Proposition 39 Energy Efficiency Financing Program Selection/Procurement Process Tip Sheet

As school districts receive approval for their Proposition 39 projects and funds are disbursed, districts should take care to fulfill the legal requirements so that those funds aren't withdrawn by the State when audits are submitted at the end of the project. Proposition 39 projects (projects being paid for with Proposition 39 funds) must comply with the requirements of the Public Resources Code and the California Energy Commission ("CEC") Guidelines. Don't confuse legal requirements for approving solar projects (Government Code Sections 4217.10 et seq.) with legal requirements for energy efficiency projects funded by Proposition 39 (Public Resources Code and CEC Guidelines).

A. Proposition 39 Requirements. (Public Resources Code § 26235 and others; CEC Guidelines)

1. Selection Process. Comparative process for selection of company doing projects (we recommend an RFP or RFQ)

- No sole source. (Public Resources Code Section 26235 (c))
- Competitive bid not required but some type of comparative process required
- Statute permits (but does not require) use of "best value criteria" (Public Resources Code § 26235 (c))

2. Board approval of company selection and Proposition 39 project contract

Board resolution approving selection of company (with regular agenda notice – 72 hours)

3. Contract must include:

- Clear and accurate description of the eligible energy project (Pub. Res. Code § 26206(d));
- Identification of the materials, products, or services; and
- Budget with costs and an estimate of the projected energy savings. (Pub. Res. Code § 26206(d))
(comparison of district's energy use before efficiency upgrades and projected reduction of energy use after upgrades)
 - Results of Investment Grade Audit (including an energy survey and energy analysis) which complies with Guidelines as part of the comparison
- Scope of services
 - Language that vendor agrees to ensure all Proposition 39 project services will comply with Guidelines
 - Language that vendor agrees that the project/expenditure will meet Proposition 39 funding requirements
 - Language that vendor agrees to provide necessary data and coordinate project with all submission and reporting requirements
 - Language that vendor agrees to amend contract to reflect reduced funding allocation and change in energy expenditure plan if Proposition 39 monies are reduced
 - District must have authority to review and approve projects
 - Sample language: ["Vendor] acknowledges that all Work must qualify as an eligible project under Proposition 39; and that the Scope of Work may be amended to reflect changes in funding allocation and District's energy expenditure plan, upon mutual agreement of the Parties and a written amendment to this Contract related to any changes in scope, payment and duration. Prior to commencement of any Work, District shall review and approve the Project."

4. **Contract should include:**

- Compensation
 - Not-to-exceed cap based on estimated funding allocation
 - Agreement to modify if Proposition 39 funds change
 - Payment schedule consistent with funding allocation schedule
- Records
 - Language that vendor agrees to maintain and make available records for inspection by District and other agencies
 - Language that vendor will provide or assist district in providing required annual and final reports for each Proposition 39 funded project
 - Language that vendor will provide data for reports to Citizens Oversight Board
- Compliance with laws
 - Language that vendor will comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work, including but not limited to data and reports to CEC required under Proposition 39

B. **Solar Project. (Govt Code sections 4217.10 et seq.)**

1. **Selection Process**

- Not legally required to use competitive bidding or even comparative process for solar projects, but districts must make specific findings at regularly scheduled board meeting noticed two weeks prior. We recommend RFP or RFQ as best practice. (Government Code §§ 4217.10 et seq.)

2. **Board approval of company selection and solar contract. Board resolution approving selection of company and approval of contract (Requires two week notice prior to meeting)**

- Findings at a board meeting by the district that the solar project is projected to save money and is in the district's best interest. Requires financial analysis.
- Outside consultant (or competent staff member) financial evaluation of projected savings
- Extended public notice – public needs to be notified of board meeting in which findings will be made two weeks prior to the meeting. Ensure public comment
- Documents consistent with the above (public notice, resolution, agenda item, solar contract)
- Agenda item must be on regularly scheduled board meeting

3. **Contract. Depending on what type of contract is being entered into (Power Purchase Agreement, Design-Build, etc.), significant terms for review (specific to solar projects) include:**

- | | |
|-----------------------------------|-------------------------|
| • Energy production guarantee | • CEQA |
| • Protection of system (security) | • Bonds |
| • Construction provisions | • Prevailing wage |
| • DSA approval of facilities | • Damage or loss of use |
| • Environmental incentive | • Public information |

THIS GUIDE IS A SUMMARY ONLY AND NOT LEGAL ADVICE. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO DETERMINE HOW THIS MAY APPLY TO YOUR SPECIFIC FACTS AND CIRCUMSTANCES.

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