

California Department of Education

Executive Office

SBE-005 (REV. 12/2017)

General Waiver

# California State Board of Education January 2017AgendaItem #W-07

## Subject

Request by three school districts to waive all or portions of California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Brea-Olinda Unified School District 20-9-2017
* Claremont Unified School District 17-10-2017
* Sacramento City Unified School District 14-10-2017

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Brea-Olinda Unified School District is requesting a waiver of California *Education Code* sections 17473, and 17474, and portions of 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the district to maximize the return on the lease of the site in a manner that best serves their school and community.

The Claremont Unified School District is requesting a waiver of California *Education Code* sections 17473, and 17474, and portions of 17455, 17466, 17468, 17470, 17472, and 17475, which will allow the district to maximize the return on the lease of the site in a manner that best serves their schools and community.

The Sacramento City Unified School District is requesting a waiver of California *Education Code* sections 17473, and 17474, and portions of 17455, 17466, 17469, 17472, and 17475, which will allow the district to maximize the return on the lease of the site in a manner that best serves their schools and community.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No
* The California Department of Education recommends approval with the following conditions: that the final acceptance by the governing boards of the Brea-Olinda, Claremont, and Sacramento City Unified School Districts be made within 60 days of the meetings in which the proposals are received, and that the reasons for the acceptance be discussed in public session and included in the minutes of the meetings.

## Summary of Key Issues

Under provisions of *EC* sections 33050 through 33053, the district is requesting that specific portions of the *EC* relating to the lease of surplus property be waived.

The Brea-Olinda Unified School District requests that the specified *Education Code* sections be waived in order to allow the District to maximize the return on the sale of its site located at 109 Lilac Lane, Brea, CA in a manner that best serves their schools and community. The District would like to offer the property for sale through a Request for Proposal, followed by further negotiations, using the services of a broker who will advertise and solicit proposals from potential buyers. The District will work closely with consultants to ensure that the process by which the property is sold is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

The Claremont Unified School District requests that the specified *Education Code* sections be waived in order to allow the District to use an alternative Request for Proposal procedure for the sale of the site located at 2475 North Forbes Avenue, Claremont, CA 91711 in a manner that best serves their schools and community. The District will work closely with consultants to ensure that the process by which the property is sold is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

The Sacramento City Unified School District requests that the specified *Education Code* sections be waived in order to allow the District to lease the Old Marshall Site located at 2718 G Street, Sacramento, CA in a manner that best serves their schools and community. The District has pursued a process in which a Request for Proposal was issued seeking proposals from qualified real estate developers for the redevelopment of the Site. The District will work closely with consultants to ensure that the process by which the property is sold is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

**Demographic Information:**

The Brea-Olinda Unified School District has a student population of 5,872 and is located in an urban area of Orange County.

The Claremont Unified School District has a student population of 7,166 and is located in a small area of Los Angeles County.

The Sacramento City Unified School District has a student population of 46,815 and is located in an urban area of Sacramento County.

Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available at <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

## Summary of Previous State Board of Education Discussion and Action

The State Board of Education has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The districts are requesting to waive the same or similar provisions for the lease of surplus property.

## Fiscal Analysis (as appropriate)

The flexibility in property disposition requested herein will allow the Brea-Olinda Unified School District to maximize revenue from the sale of the property.

The flexibility in property disposition requested herein will allow the Claremont Unified School District to maximize revenue from the sale of the property.

The flexibility in property disposition requested herein will allow the Sacramento City Unified School District to maximize revenue from the lease of the property.

## Attachment(s)

* **Attachment 1:** Summary Table (3 pages)
* **Attachment 2:** Brea-Olinda Unified School District 20-9-2017 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Claremont Unified School District 17-10-2017 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Sacramento City Unified School District 14-10-2017 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

| Waiver Number | School District | Property | Period of Request | Local Board Approval Date | Public Hearing Date | Bargaining Unit Representative | Advisory Committee Consulted |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 20-9-17 | Brea-Olinda Unified | 109 Lilac Lane, Brea, CA (as referenced in the Brea-Olinda Unified meeting agenda from 9/25/2017) | **Requested:**October 1, 2017 to June 30, 2019**Recommended:**October 1, 2017 to June 30, 2019 | 9/25/17 | 9/25/17Public Hearing Advertised:9/8/2017 and 9/15/2017in the Orange County Register, and publicly posted | Brea-Olinda Teachers Association Joseph Bartell, President8/30/2017 **Support**California School Employees Association #207Elizabeth Santos, President8/30/2017 **Support** | Surplus Property Advisory Committee9/25/2017 |
| 17-10-17 | Claremont Unified | 2475 North Forbes Avenue, Claremont, CA 91711 | **Requested:**November 1, 2017 to November 1,2018**Recommended:**November 1, 2017 to November 1, 2018 | 10/19/17 | 10/19/17Public Hearing Advertised:Notice published in local newspaper Claremont Courier on 10/6/2017 | California School Employees Association #200Cindy Eiland, President 10/5/2017 **Support**  | Facility Advisory Committee10/5/2017 |
| 14-10-17 | Sacramento City Unified | 2718 G Street, Sacramento, CA | **Requested:** August 12, 2016 to August 11, 2018**Recommended:**August 12, 2016 to August 10, 2018 | 10/5/17 | 10/5/2017 Public Hearing Advertised:Notice published in newspaper; Agendized per the Brown Act | Sacramento City Teachers Association David Fisher, President 8/9/2017 **Neutral**Service Employees International Union Ian Arnold, Field Representative 8/29/2017 **Support** TeamstersAlan Daurie, Business Agent 8/30/2017 **Support**United Professional Educators Judy Montgomery, President 9/.25/2017 **Support** | District Facilities Committee8/8/2017 |

Created by California Department of Education
Month, Year

# Attachment 2: Brea-Olinda Unified School District 20-9-2017

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3066449

Waiver Number: 20-9-2017

Active Year: 2017

Date In: 9/28/2017 11:16:52 AM

Local Education Agency: Brea-Olinda Unified School District

Address: 1 Civic Center Cir.

Brea, CA 92821

Start: 10/1/2017

End: 6/30/2019

Waiver Renewal: No

Previous Waiver Number: NA

Previous SBE Approval Date: NA

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17473, 17474, 17455, 17466, 17468, 17469, 17470, 17472, and 17475

Ed Code Authority: 33050-33053

Ed Code or *CCR* to Waive: *Education Code* section 17455.

The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district, [and shall be made in the manner provided by this article.]

Rationale: The Brea Olinda Unified School District (“District”) requests the specified *Education Code* sections be waived in order to allow the District to maximize the return on the sale of one of its sites in a manner that best serves our schools and community. The District would like to offer the property for sale through Requests for Proposals followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential buyers. The article referenced by *Education Code* section 17455 consists of sections 17455 through 17484, which contain provisions regarding the sale or lease of real property that are inconsistent with the manner in which the District hopes to market and sell the property.

The District will work closely with consultants to ensure that the process by which the property is sold is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

*Education Code* section 17466.

Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.]

Rationale: The stricken language to be waived provides for the governing board to establish a minimum price or rental and requires sealed proposals to purchase or lease the property. The District requests that the process of sealed proposals to purchase the property and oral bids be waived, allowing the District to negotiate the sale of the property with an interested purchaser through a more direct process. The requirement restricts the District’s flexibility in negotiating price, payments, and other terms that may yield greater economic and other benefits to the District than a sealed bid process. As the District cannot predict in advance the timing of negotiations with interested purchasers, it cannot at the time of adopting the resolution contemplated by Section 17466 know when proposals must be brought back to the governing board for consideration. The District intends to utilize the services of a broker to advertise and solicit proposals for the purchase of the property. Once an interested party is confirmed, the District’s governing board will consider approval of the sale at an open session of a regularly scheduled board meeting.

*Education Code* section 17468.

If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid], which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The stricken language to be waived provides for the District to include information about a broker’s commission in sealed proposals and oral bids. As stated above, the District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to use the services of a broker but waiving the requirement of a “sealed” proposal or “oral bid.” If the District uses a licensed real estate broker, the commission shall be specified in documents required through a brokered sale.

*Education Code* section 17469.

Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district, [not less than 15 days before the date of the meeting,] and by publishing the notice not less than once a week for three successive weeks [before the meeting] in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein.

Rationale: The stricken language to be waived assumes that the governing board would be following the process of opening proposals and hearing oral bids at a specific meeting. Such a requirement, however, would be removed pursuant to the language requested to be stricken in *Education Code* section 17466. As modified, the District would still provide notice of its adoption of a resolution of intent to sell the property, but the posting of that resolution and notice in a newspaper would no longer be tied to an established date to receive proposals.

*Education Code* section 17470.

(a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail [, at least 60 days prior to the meeting].

(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The stricken language to be waived assumes that the governing board would be following the process of opening proposals and hearing oral bids at a specific meeting. Such a requirement, however, would be removed pursuant to the language requested to be stricken in *Education Code* Section 17466. As modified, the District would still take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be connected to an established date to receive proposals.

*Education Code* section 17472.

[At the time and place fixed in the resolution for the meeting of the governing body,] all [sealed] proposals which have been received shall, in public session, be [opened,] examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.]

Rationale: With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to sell the property to the party that presents the most favorable proposal to the District. The governing board would, therefore, be able to sell to the party submitting the proposal that best meets the District’s needs. By removing the requirement that an oral bid be accepted, the District would be able to determine what constitutes the most desirable bid.

*Education Code* section 17473.

[Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The District asks that this entire section be waived because the District, in negotiating an agreement to sell the property, will not be accepting oral bids.

*Education Code* section 17474.

[In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The District asks that this entire section to be waived because the District, in negotiating an agreement to sell the property, will not be accepting oral bids.

*Education Code* section 17475.

The final acceptance by the governing body may be made [either at the same session or] at any [adjourned] session [of the same meeting held within the 10 days next following].

Rationale: Modification of this section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation. Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in the process. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal is shared openly.

Outcome Rationale: The District is requesting that the requirement of sealed proposals and the oral bidding process be waived allowing the District to market the property based on the brokerage process as three previous attempts to sell the property going through the *Education Code* process have failed. The District is requesting that it be allowed to sell the property by taking it directly to the market place and, through a direct negotiation process, selling it at the highest value on the most advantageous terms to the District. Waiver of the statutory provisions will allow the District to maximize the value of the property.

Outcome Rationale: BOUSD is requesting that the requirement of sealed proposals and the oral bidding process be waived allowing the District to market the property based on the brokerage process as three previous attempts to sell the property utilizing the *Education Code* process has failed. The District is requesting that it be allowed to sell the property by taking it directly to the marketplace, utilizing a direct negotiation process, and selling it at the highest value and on the most advantageous terms to the District. Approval of this waiver of the statutory provisions will allow the District to maximize the value of the property.

Student Population: 5872

City Type: Urban

Public Hearing Date: 9/25/2017

Public Hearing Advertised: The public hearing was advertised in the Orange County Register (a general circulation newspaper) on both 09/08/2017 and 09/15/2017 and posted in three locations throughout the District.

Local Board Approval Date: 9/25/2017

Community Council Reviewed By: Surplus Property Advisory Committee

Community Council Reviewed Date: 9/25/2017

Community Council Objection: No

Community Council Objection Explanation: NA

Audit Penalty YN: No

Categorical Program Monitoring: No

Submitted by: Ms. Jean Aldrete

Position: Assistant Superintendent, Business Services

E-mail: jaldrete@bousd.us

Telephone: 714-990-7812

Fax: NA

Bargaining Unit Date: 08/30/2017

Name: Brea Olinda Teacher's Association

Representative: Joseph Bartell

Title: BOTA President

Position: Support

Comments: NA

Bargaining Unit Date: 08/30/2017

Name: California School Employees Association #207

Representative: Elizabeth Santos

Title: CSEA President

Position: Support

Comments: NA

# Attachment 3: Claremont Unified School District 17-10-2017

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964394

Waiver Number: 17-10-2017

Active Year: 2017

Date In: 10/23/2017 8:16:59 PM

Local Education Agency: Claremont Unified School District

Address: 170 West San Jose Ave.

Claremont, CA 91711

Start: 11/1/2017

End: 11/1/2018

Waiver Renewal: No

Previous Waiver Number: NA

Previous SBE Approval Date: NA

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17468, 17470, 17472, 17473, 17474, 17475

Ed Code Authority: 33050

Ed Code or *CCR* to Waive: The Claremont Unified School District desires to waive the following sections and portions of the *Education Code*. Specifically, the District requests that the language in brackets [ ] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district[, and shall be made in the manner provided by this article].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the land located at 2475 North Forbes Avenue, Claremont, California 91711 (the “Property”). Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. The deleted language indicates that the sale of the Property will be made in the manner provided by this Article but the District is asking that several provisions of the Article be waived and consequently, the sale will not be made in the manner provided in Article 4.

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.] .

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. The deleted language indicates that the District must pass a resolution setting a time by which the District will open all sealed bids for the Property. Since the District will not be conducting a bid process, and cannot predict the timing of the RFP process and its subsequent negotiations with proposers, it cannot know when proposals must be brought back to the governing board for consideration. After issuing an RFP for the sale of the Property and discussing the proposals received from interested parties, the District will bring proposals to the governing board for further consideration.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. The deleted language indicates the District will receive sealed proposals and oral bids to purchase the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the sale of the Property with an interested purchaser.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail[, at least 60 days prior to the meeting].

(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. The deleted language indicates the Board would be setting a specific meeting to receive proposals for the purchase of the Property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. At the time and place fixed in the resolution for the meeting of the governing body, all [sealed] proposals which have been received shall, in public session, [be opened], examined, and declared by the board. [Of the proposals submitted [which conform to all terms and conditions specified in the resolution of intention to sell or to lease and] which are made by responsible bidders, the proposal is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith,shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. The deleted language requires the District to obtain sealed bids and select the highest bid. The District is seeking a waiver to allow it to seek proposals and negotiate with interested parties to select the proposal that best meets the needs of the District. The District may select a proposal that offers a lower price but agrees to sale terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to sell to the highest bidder.

*EC* 17473. WAIVE ENTIRE S*EC*TION [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into purchase and sale agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17474. WAIVE ENTIRE S*EC*TION [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed.

One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into purchase and sale agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days [next] following].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into purchase and sale agreement that provides the most benefit to the District. The deleted language indicates that a school district’s governing board shall accept the highest bid at the bid hearing or within the next 10 days. The District will not conduct a bid hearing but instead will engage in negotiations with any party submitting a proposal in response to the RFP. Once the negotiations end, and the District identifies the best proposal, the District’s Board will accept the proposal. Thus, the language in this Section requiring the board to accept a bid on the bid date or within 10 days does not apply to the RFP process.

Outcome Rationale: The District owns approximately 9.77 acres of land located at 2475 North Forbes Avenue, Claremont, California 91711 also known as the District’s former La Puerta Property (“Property”). The District convened an Advisory Committee to advise on the future disposition of the Property. Based on the Advisory Committee’s recommendation, the District declared the Property surplus and authorized the sale of the Property.

The District seeks a waiver of certain portions of the sale procedure set forth in *Education Code* section 17466 et seq. so it can use an RFP process in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. This RFP process will allow the District to maximize its return on the sale of the Property to the greatest extent possible. The District anticipates that the location and certain qualities of the Property will make it extremely attractive to potential purchasers through the RFP process.

The District already tried to sell the Property through the bid process but was unable to attract viable bids which demonstrates that the bid auction scenario is unlikely to attract serious and capable buyers to this Property. The District needs the ability to be flexible and work with potential buyers to create a valuable package. A waiver from the surplus property requirements will allow the District to do this. The District will work to develop a strategic plan for advertising and marketing the Property in order to solicit proposals from potential buyers interested in the Property.

The District will work closely with legal counsel to ensure that the process by which the Property is sold is fair and open. As indicated above, such a process will produce a better result than another bid auction for both the District and the community.

Student Population: 7166

City Type: Small

Public Hearing Date: 10/19/2017

Public Hearing Advertised: Notice published in local newspaper Claremont Courier on 10/6/17

Local Board Approval Date: 10/19/2017

Community Council Reviewed By: Facility Advisory Committee

Community Council Reviewed Date: 10/5/2017

Community Council Objection: No

Community Council Objection Explanation: NA

Audit Penalty YN: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney for District

E-mail: smcloughlin@aalrr.com Telephone: 562-653-3200 x3821

Fax: NA

Bargaining Unit Date: 10/05/2017

Name: CA School Employees Assoc. #200

Representative: Cindy Eiland

Title: President

Position: Support

Comments: NA

# Attachment 4: Sacramento City Unified School District 14-10-2017

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3467439

Waiver Number: 14-10-2017

Active Year: 2017

Date In: 10/19/2017 1:55:39 PM

Local Education Agency: Sacramento City Unified

Address: 5735 47th Ave.

Sacramento, CA 95824

Start: 8/12/2016

End: 8/11/2018

Waiver Renewal: No

Previous Waiver Number: NA

Previous SBE Approval Date: NA

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Lease of Surplus Property

Ed Code Section: 17455, 17466, 17469, 17472, 17473, 17474, 17475

Ed Code Authority: 33050-33053

Ed Code or *CCR* to Waive: 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district, [and shall be made in the manner provided by this article].

17466. Before ordering the [sale or] lease of any property the governing board, in a regular open meeting, by a two-thirds votes of all its members, shall adopt a resolution, declaring its intention to [sell or] lease the property, as the case may be. The resolution shall describe the property proposed to be [sold or] leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

17469. Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district, [not less than 15 days before the date of the meeting, and by publishing the notice not less than once a week for three successive weeks before the meeting in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein].

17472. [At the time and place fixed in the resolution for the meeting of the governing body, all sealed] proposals which have been received shall, in public session, be [opened,] examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.]

17473. [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

17474. [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days next following].

Outcome Rationale: The Sacramento City Unified School District (“District”) requests that the specified *Education Code* sections, or portions thereof, be waived in order to allow the District to lease its Old Marshall Site located at 2718 G Street, Sacramento, California (“Site”). Old Marshall is a 113-year-old former school that has been vacant since 2009. The desired outcome is to use this unique asset, which cannot be achieved by the statutory bid process, in a manner that best serves the District’s schools and the surrounding community. The Marshall School/New Era Park Neighborhood Association (“Association”) has been actively involved, and will continue to be actively involved, to engage in the process of assisting the District so that the Old Marshall Site will be utilized in a manner that will be the most beneficial, not only to the District, but to the neighborhood in the uses of the Site. Accordingly, the District has pursued a process in which a Request for Proposals (“RFP”) was issued seeking proposals from qualified real estate developers for the redevelopment of the Site. Only three proposals were submitted. The best proposal for the District and the neighborhood was submitted by the team of Mogavero Architects and Bardis Homes (“Mogavero”) which has committed to establishing for the Site “. . . a neighborhood input and review process that will engage the surrounding residents as well as the neighborhood as a whole.” The current proposal is a “senior cohousing proposal” that will preserve “the iconic status of the Old Marshall School, provide much-needed on-going revenue to the school district, maintain connection to the property’s academic heritage, and is based on a solid, achievable pathway to success.”

Granting the waiver will allow maximum transparency and input from the community, which cannot be possible through the competitive bid process required by *Education Code* sections 17455 through 17484.

It has been the desire of the District to attract potential long-term lessees (more than one year and up to the statutory maximum) who will not only pay a fair lease price, as determined by the District, to lease the Site, but who will also enhance the Site and be compatible with the surrounding neighborhood. The process the District has and will use will be designed to achieve the best result for the District, the schools, and the community.

The proposed developer, Mogavero, needs assurance that the waiver will be granted since there will be considerable time and expense invested in due diligence activities and in securing the necessary approvals and permits from the City of Sacramento. Only with a waiver can the District and the proposed developer engage in lease negotiations which, if successful, would return to the Board, after public notice, for approval of a lease. If, for any reason, the proposed developer, Mogavero, is unable to negotiate and enter into a mutually satisfactory lease with the District, the purpose of the waiver is to continue to allow the District the flexibility of issuing a subsequent RFP, or reviewing previous proposals, with input and recommendations from the Association and the public, to achieve the objectives of using Old Marshall for the benefit of the District and the surrounding neighborhood.

The District seeks to waive the portion of *Education Code* section 17466 that provides for a minimum price or rental and requires sealed proposals to lease the Site. This requirement restricts the District’s flexibility in negotiating price, payment, and other terms that may yield greater economic benefit to the District and community benefits than a sealed bid process. The statutory process eliminates the District’s ability to involve the community in the uses of Old Marshall.

Since the District is requesting to waive the requirement pursuant to *Education Code* section 17466 of fixing a time not less than three weeks thereafter for a public meeting at which sealed proposals will be received and considered, the District also seeks to waive the corresponding provisions in section 17469.

The District seeks to waive a portion of *Education Code* section 17472 regarding acceptance of oral bids. With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to lease the Site to the lessee(s) with the most favorable proposal to the District and the community. The Board would, therefore, be able to lease to the lessee submitting the proposal that best meets the needs of the District and the community. By removing the requirement that an oral bid be accepted, it is within the discretion of the District to determine what constitutes the most desirable lease proposal.

The District requests that *Education Code* section 17463 be waived in its entirety since the District, in negotiating an agreement to lease the Site, will not be accepting oral bids in addition to sealed bids. Similarly, the District requests that *Education Code* section 17474 be waived in its entirety.

The Districts also seeks to waive the portion of *Education Code* section 17475 that specifies the time for final acceptance of a bid. Rather than specifying a certain number of days or a time frame, the District seeks flexibility in leasing the Site. The District has fostered and will continue to ensure a public process whereby the reasons for the determination of the most desirable lease proposal is shared openly. Prior to the decision to lease the Site, the District has received comment from its Facilities Committee, as an advisory committee, as well as the public.

Student Population: 46815

City Type: Urban

Public Hearing Date: 10/5/2017

Public Hearing Advertised: Notice in newspaper, Agendized per the Brown Act

Local Board Approval Date: 10/5/2017

Community Council Reviewed By: District Facilities Committee

Community Council Reviewed Date: 8/8/2017

Community Council Objection: No

Community Council Objection Explanation: NA

Audit Penalty YN: No

Categorical Program Monitoring: No

Submitted by: Ms. Cathy All

Position: Chief Operations Officer, Facility Support Service

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Bargaining Unit Date: 08/09/2017

Name: Sacramento City Teachers Association

Representative: David Fisher

Title: President

Position: Neutral

Comments: NA

Bargaining Unit Date: 08/29/2017

Name: Service Employees International Union

Representative: Ian Arnold

Title: Field Representative

Position: Support

Comments: NA

Bargaining Unit Date: 08/10/2017

Name: Teamsters

Representative: Alan Daurie

Title: Business Agent

Position: Support

Comments: NA

Bargaining Unit Date: 09/25/2017

Name: United Professional Educators

Representative: Judy Montgomery

Title: President

Position: Support

Comments: NA