

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2019 AgendaItem #W-06

## Subject

Request by two local educational agencies to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Corona-Norco Unified School District: 4-10-2018
* Palm Springs Unified School District: 23-10-2018
* Palm Springs Unified School District: 24-10-2018

## Type of Action

Action, Consent

## Summary of the Issues

The Corona-Norco Unified School District (Corona-Norco USD) is requesting to waive all of California *EC* 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 sale of one piece of property through the Request for Proposal (RFP) process.

The Palm Springs Unified School District (Palm Springs USD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of 17466, 17472, and 17475, which will allow the district to maximize the return on the sale of two pieces of property through the RFP process.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following conditions: that the final determinations by the governing boards of the Corona-Norco USD and the Palm Springs USD be made within 60 days of the public meetings when the proposals are received, and that the reasons for those determinations be discussed in public session and included in the minutes of the meetings.

## Summary of Key Issues

Under provisions of *Education Code (EC)* sections 33050 through 33053, the districts are requesting that specific portions of the *EC* relating to the sale of surplus property be waived.

### Corona-Norco Unified School District

The Corona-Norco USD is selling 9.33 acres of property located on Garretson Avenue, between Santana Way and Chase Drive, in the city of Corona, known as the "Roosevelt Elementary School Site.” The property was acquired for school purposes, but has never been used for a school. The district is requesting that the requirement of sealed proposals and the oral bidding be waived, allowing the district to market the property through an RFP process. The district has previously attempted to sell the property via the competitive bidding process, but was not successful and has concluded that offering the property for sale through an RFP will provide the maximum benefit to the district, which will facilitate improved district operations. The property is entitled by the city of Corona for residential development. The State Board of Education (SBE) previously granted a waiver to the district in January 2017 (W-05).

### Palm Springs Unified School District

The Palm Springs USD is seeking two waivers to sell the property (i.e., buildings) residing on two leased sites, one being 980 East Tahquitz Canyon Way and the other being 1000 East Tahquitz Canyon Way, in the city of Palm Springs. At both locations, the property consists of buildings the district currently owns. The land on which these buildings are located is Indian Reservation land, and there will be a need to reassign the ground leases and receive consent from the Bureau of Indian Affairs. The district currently uses the buildings for meeting rooms, health services, and administrative offices, but these uses will be shifted to a new location within the district's boundaries. The district is requesting that the requirement of sealed proposals and the oral bidding process be waived, allowing the district to maximize the return on the sale of the buildings and provide flexibility, since the potential purchasers will need to be able to take over the district’s ground lease upon purchasing the buildings. The SBE previously granted a waiver to the district in January 2015 (W-10).

### Demographic Information

The Corona-Norco USD has a student population of 52,548 and is located in an urban area of Riverside County.

The Palm Springs USD has a student population of 24,000 and is located in a suburban area of Riverside County.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information Web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

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

The SBE has approved all previous waivers regarding the bidding process and the sale of surplus property. The Corona-Norco USD is requesting to waive the same or similar provisions for the sale of surplus property. Waiver #4-10-2016, available on the SBE web page located at [https://www.cde.ca.gov/be/ag/ag/yr17/documents/jan17w05.doc,](https://www.cde.ca.gov/be/ag/ag/yr17/documents/jan17w05.doc) was previously approved by the SBE as part of the January 2017 Agenda and it expires on January 11, 2019. The Palm Springs USD is requesting to waive the same or similar provisions for the sale of surplus property. Waivers #1-11-2014 and 3-11-2014, available on the SBE web page located at <https://www.cde.ca.gov/be/ag/ag/yr15/documents/jan15w09.doc>, were previously approved by the SBE as part of the January 2015 Agenda and they expired on November 3, 2015.

## Fiscal Analysis (as appropriate)

The flexibility in property disposition requested herein will allow the Corona-Norco USD and the Palm Springs USD to maximize revenue from the sale of their properties.

The Corona-Norco USD site has been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the State Allocation Board (SAB).

The Palm Springs USD’s property (i.e., buildings) sits on land leased by the district. The buildings have been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the SAB.

## Attachments

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Corona-Norco USD General Waiver Request
4-10-2018 (7 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Palm Springs USD General Waiver Request
23-10-2018 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Palm Springs USD General Waiver Request
24-10-2018 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 4-10-2018 | Corona-Norco USD | Roosevelt Elementary School Site | **Requested:**January 11, 2019 to January 10, 2021**Recommended:**January 11, 2019 to January 8, 2021 | 10/2/2018 | 10/2/2018Public Hearing Advertised: District web site; District Business Services Bulletin Board. | California School Employees Association Chapter 369Lorena Lopez, President9/20/2018**Support** | Corona High School Site Council9/27/2018**No Objections** |
| 23-10-2018 | Palm Springs USD | 980 East Tahquitz Canyon Way | **Requested:**January 10, 2019 to January 10, 2021**Recommended:**January 10, 2019 to January 8, 2021 | 7/24/2018 | 7/24/2018Public Hearing Advertised: On bulletin board at the front entrance of the District Administration Center and online on July 19, 2018 | Palm Springs Teachers Association (PSTA)Herb Claggett, President8/6/2018**Support** | Board of Education7/24/2018**No Objections** |
| 24-10-2018 | Palm Springs USD | 1000 East Tahquitz Canyon Way, Palm Springs | **Requested:**January 10, 2019 to January 10, 2021**Recommended:**January 10, 2019 to January 8, 2021 | 7/24/2018 | 7/24/2018Public Hearing Advertised: On bulletin board at the front entrance of the District Administration Center and online on July 19, 2018 | Palm Springs Teachers Association (PSTA)Herb Claggett, President8/6/2018**Support** | Board of Education7/24/2018**No Objections** |

Created by the California Department of Education

November 7, 2018

# Attachment 2: **Corona-Norco Unified School District General** **Waiver Request 4-10-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3367033

Waiver Number: 4-10-2018

Active Year: 2018

Date In: 10/3/2018 11:09:54 AM

Local Education Agency: Corona-Norco Unified School District

Address: 2820 Clark Ave.

Norco, CA 92860

Start: 1/11/2019

End: 1/10/2021

Waiver Renewal: Yes

Previous Waiver Number: 4-10-2016

Previous SBE Approval Date: 1/11/2017

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17469, 17470, 17472-17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: See Attached Waiver Request

Outcome Rationale: See Attachment to 'Waiver Information" Section

Student Population: 52548

City Type: Urban

Public Hearing Date: 10/2/2018

Public Hearing Advertised: District website: [www.cnusd.k12.ca.us](http://www.cnusd.k12.ca.us/); District Business Services Bulletin Board

Local Board Approval Date: 10/2/2018

Community Council Reviewed By: Corona High School Site Council

Community Council Reviewed Date: 9/27/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Alan Giles

Position: Assistant Superintendent, Business Services

E-mail: Alan.Giles@cnusd.k12.ca.us

Telephone: 951-736-5035

Bargaining Unit Date: 09/20/2018

Name: California School Employees Association Chapt 369

Representative: Lorena Lopez

Title: President

Position: Support

## CORONA-NORCO UNIFIED SCHOOL DISTRICT WAIVER REQUEST

The following specific waiver (strike out) is requested:

**Education Code § 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 language indicating that the sale of the property is to be made in the manner provided by this article is to be waived since 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.

**Education Code § 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, 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 and receive sealed proposals for the purchase of the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals to purchase and property be waived, allowing the District to negotiate the sale of the 9.33 acre Roosevelt Elementary School Site (referred to as the "Project Site") with an interested purchaser. 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 this Section 17466 know when proposals must be brought back to the governing board for consideration. The District intends to develop a strategic plan for advertising and marketing the property in order to solicit proposals from not only the prospective land broker who attended the District's Pre-Bid meeting, but also other potential purchasers in the development community. The proposals will be brought to the governing board when necessary to consider the approval of a sale.

**Education Code § 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. Ally 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 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 Project Site be waived, allowing the District to negotiate the sale of the Project Site with an interested purchaser.

**Education Code § 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 Board would be setting a specific meeting to receive proposals for the purchase of the Project Site. 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 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 § 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 hearing 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 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 Board would be setting a specific meeting to receive proposals for the purchase of the Project Site. 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.

**Education Code§ 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 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:* The stricken language to be waived provides for the District to receive and open 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 Project Site with an interested purchaser.

**Education Code § 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 5percent, 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 offerer].

*Rationale:* The entire section is to be waived because the District, in negotiating an agreement to sell the Project Site, will not be accepting oral bids.

**Education Code § 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 entire section is to be waived because the District, in negotiating an agreement to sell the Project Site, will not be accepting oral bids.

**Education Code § 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 the 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.

The preceding sections, which are section 17455, 17466, 17469, 17470, 17472 through 17475, have strike-out but indicate the exact language being waived and is still valid.

Since the State Board of Education approved the District's initial Waiver Request Application at its January 10-11, 2017 Meeting (included as Agenda Item W05), the District has issued two RFPs in an attempt to select an experienced developer of single family homes to purchase the entitled Project Site. On both occasions, the negotiated purchase price and terms and conditions for payment of the proposers were found to be unsatisfactory to the District and all proposals were rejected. Attached is the most recent RFP which was issued on June 20, 2018. The one proposal that was submitted included a purchase price 33% below the fair market value established by the Project Site Proforma and was rejected by the governing board of the District.

**Attachment to "Waiver Information" Section**

*Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve important student performance and/or streamline or facilitate local agency operations.*

The Corona-Norco Unified School District owns the 9.33 acres of undeveloped land located on the east side of Garretson Avenue between Santana Way and Chase Drive, in the City of Corona, County of Riverside (the "Roosevelt Elementary School Site" or "Project Site"). The District is now seeking the ability to negotiate the sale of the Project Site with a suitable purchaser/developer utilizing the Request for Proposals process.

To maximize sales proceeds which will facilitate improved District operations, the District worked with the City of Corona to entitle the 9.33 acre Project Site to authorize 15 single-family residential lots. Following the unsuccessful attempt to sell the Project Site on June 14, 2016 pursuant to the statutory bidding process set forth in Education Code sections 17455-17475 when no bids were received by the September 6, 2016 deadline, the Board held a public hearing on October 4, 2016 to receive public comment on a proposed Waiver Request Application to authorize the District the ability to issue a RFP and enter into a negotiated Purchase and Sale Agreement for the Project Site. The State Board of Education at its January 10-11, 2017 meeting agendized the District's Waiver Request as item W05 and approved the requested waiver for the period of January 12, 2017 through January 11, 2019.

Since obtaining SBE approval of it Waiver Request, the Board has adopted two Resolutions of Intent to Sell (2016-2017 Resolution No. 101 and 2017-2018 Resolution No. 97), both of which are attached, after which the District issued two RFPs, neither of which resulted in the District receiving a proposal in which the purchase price and terms and conditions were deemed acceptable by the District's governing board. The District desires to renew its previously approved Waiver Request to allow additional time for the real estate market in the Corona area to improve in order to attract more competitive proposals closer to the fair market value of the Project Site.

# Attachment 3: **Palm Springs Unified School District General Waiver Request 23-10-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3367173

Waiver Number: 23-10-2018

Active Year: 2018

Date In: 10/31/2018 11:42:02 PM

Local Education Agency: Palm Springs Unified School District

Address: 150 District Center Dr.

Palm Springs, CA 92264

Start: 1/10/2019

End: 1/10/2021

Waiver Renewal: Yes

Previous Waiver Number: 1-11-2014

Previous SBE Approval Date: 1/14/2015

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17466, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: *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 *Education Code* and use an alternative procedure for the sale of approximately 1.99 acres of real property located within the District at 980 East Tahquitz Canyon Way, Palm Springs, California 92262, consisting of certain buildings the District currently owns (the "Property") located on land currently leased by the District (the "Land"), known generally as the 980 East Tahquitz 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 at the time of adopting the resolution contemplated by this Section 17466 know when proposals must be brought back to the governing board for consideration. After passing a resolution that authorizes the District to go forward with the RFP process, the District intends to solicit proposals for the Property and bring proposals to the governing board to consider the approval of the sale. *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 *Education Code* and use an alternative procedure for the sale of the Property located the Land. Specifically, the District desires to sell the Property via an alternative 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 SECTION [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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 SECTION [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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 Palm Springs Unified School District ("District") owns approximately 1.99 acres of real property located within the District at 980 East Tahquitz Canyon Way, Palm Springs, California 92262, consisting of certain buildings the District currently owns (the "Property") located on land currently leased by the District (the "Land"), known generally as the 980 East Tahquitz Property. The Property is currently used by the District as its administrative offices which shall be moved to a new location within the District's boundaries. The District's governing Board declared the Property surplus and decided to sell the Property pursuant to *Education Code* section 17466 et seq. The District previously attempted to sell the Property pursuant to the competitive bidding procedure required by the *Education Code* but was unable to complete the sale. Therefore, the District previously sought and obtained a waiver from the State Board of Education allowing the District to use the Request for Proposal ("RFP") process to sell the Property (the "First Waiver"). The District received proposals pursuant to the First Waiver RFP process but was unable to complete the sale of the Property. The District has determined that current conditions related to the Property may allow the District to complete the sale of the Property through issuing another RFP to solicit proposals for the sale of the Property. The purchaser will take over the District's lease of the Land upon purchasing the Property. The District seeks a waiver of certain portions of the sale procedure set forth in *Education Code* section 17466 et seq. In summary, the District seeks to waive the provisions requiring the District to conduct a formal bid hearing process in which the District solicits bids and then enters into a purchase and agreement with the winning bidder. Instead, the District desires to sell the Property via an alternative the 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 buyers through the RFP process. The fact that the purchaser of the Property will accept assignment of the District's lease of the Land makes the RFP process even more necessary to identify potential purchasers who are willing and able to take over the lease. In the current real estate market climate, a bid auction scenario is unlikely to attract serious and capable buyers to the 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 sale of the Property with the RFP process will allow the District to continue to provide a high-quality educational experience for its students. 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 a bid auction for both the District and the community.

Student Population: 24000

City Type: Suburban

Public Hearing Date: 7/24/2018

Public Hearing Advertised: In bulletin board at front entrance of District Administration Center and on-line on July 19, 2018

Local Board Approval Date: 7/24/2018

Community Council Reviewed By: Board of Education: James Williamson (Pres),

Richard Clapp Karen Cornett John Gerardi Madonna Gerrell

Community Council Reviewed Date: 7/24/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney for District

E-mail: smcloughlin@aalrr.com

Telephone: 562-653-3821

Fax: 760-325-8726

Bargaining Unit Date: 08/06/2018

Name: PSTA

Representative: Herb Claggett

Title: President

Position: Support

# Attachment 4: **Palm Springs Unified School District General** **Waiver Request 24-10-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3367173

Waiver Number: 24-10-2018

Active Year: 2018

Date In: 10/31/2018 11:49:59 PM

Local Education Agency: Palm Springs Unified School District

Address: 150 District Center Dr.

Palm Springs, CA 90740

Start: 1/10/2019

End: 1/10/2021

Waiver Renewal: Yes

Previous Waiver Number: 3-11-2014

Previous SBE Approval Date: 1/14/2015

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17466, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: *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 *Education Code* and use an alternative procedure for the sale of approximately 0.88 acres of real property located within the District at 1000 East Tahquitz Canyon Way, Palm Springs, California 92262, consisting of certain buildings the District currently owns (the "Property") located on land currently leased by the District (the "Land"), known generally as the 1000 East Tahquitz 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 at the time of adopting the resolution contemplated by this Section 17466 know when proposals must be brought back to the governing board for consideration. After passing a resolution that authorizes the District to go forward with the RFP process, the District intends to solicit proposals for the Property and bring proposals to the governing board to consider the approval of the sale. *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 *Education Code* and use an alternative procedure for the sale of the Property located the Land. Specifically, the District desires to sell the Property via an alternative 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 SECTION [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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 SECTION [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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 *Education Code* and use an alternative procedure for the sale of the Property located on the Land. Specifically, the District desires to sell the Property via an alternative 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 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 Palm Springs Unified School District (" District") owns approximately 0.88 acres of real property located within the District at 1000 East Tahquitz Canyon Way, Palm Springs, California 92262, consisting of certain buildings the District currently owns (the "Property") located on land currently leased by the District (the "Land"), known generally as the 1000 East Tahquitz Property. The Property is currently used by the District for meeting rooms and health services which shall be moved to a new location within the District's boundaries. The District's governing Board declared the Property surplus and decided to sell the Property pursuant to *Education* *Code* section 17466 et seq. The District previously attempted to sell the Property pursuant to the competitive bidding procedure required by the *Education Code* but was unable to complete the sale. Therefore, the District previously sought and obtained a waiver from the State Board of Education allowing the District to use the Request for Proposal ("RFP") process to sell the Property (the "First Waiver"). The District received proposals pursuant to the First Waiver RFP process but was unable to complete the sale of the Property. The District has determined that current conditions related to the Property may allow the District to complete the sale of the Property through issuing another RFP to solicit proposals for the sale of the Property. The purchaser will take over the District's lease of the Land upon purchasing the Property. The District seeks a waiver of certain portions of the sale procedure set forth in *Education Code* section 17466 et seq. In summary, the District seeks to waive the provisions requiring the District to conduct a formal bid hearing process in which the District solicits bids and then enters into a purchase and agreement with the winning bidder. Instead, the District desires to sell the Property via an alternative the 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 buyers through the RFP process. The fact that the purchaser of the Property will accept assignment of the District's lease of the Land makes the RFP process even more necessary to identify potential purchasers who are willing and able to take over the lease. In the current real estate market climate, a bid auction scenario is unlikely to attract serious and capable buyers to the 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 sale of the Property with the RFP process will allow the District to continue to provide a high-quality educational experience for its students. 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 a bid auction for both the District and the community.

Student Population: 24000

City Type: Suburban

Public Hearing Date: 7/24/2018

Public Hearing Advertised: In bulletin board at front entrance of District Administration Center and on-line on July 19, 2018

Local Board Approval Date: 7/24/2018

Community Council Reviewed By: Board of Education: James Williamson (Pres),

Richard Clapp Karen Cornett John Gerardi Madonna Gerrell

Community Council Reviewed Date: 7/24/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney for District

E-mail: smcloughlin@aalrr.com

Telephone: 562-653-3821

Fax: 760-325-8726

Bargaining Unit Date: 08/06/2018

Name: PSTA

Representative: Herb Claggett

Title: President

Position: Support