

Business and Noninstructional Operations

BIDS

Uniform Public Construction Cost Accounting Act

Procedures for awarding contracts for public works projects shall be determined on the basis of the amount of the project, as follows:

1. Public projects, of \$60,000 or less, except as otherwise provided by law for informal procedures, may be performed by District employees by force account, negotiated contract, or purchase order -as set forth in Section 22032, et. Seq., of the Public Contract Code.
2. Contracts for public projects of \$200,000 or less, except as otherwise provided by law, may be awarded through the following informal procedures: (Public Contract Code 22032, 22034, 22038)
 - a. The Superintendent/designee shall prepare a notice inviting informal bids which describes the project in general terms, explains how to obtain further information about the project, and states the time and place for the submission of bids. This notice shall be disseminated by mail, fax, or email to either or both of the following:
 - (1) All contractors on a list of qualified contractors maintained by the District for the category of work being bid, unless the product or service is proprietary, at least 10 calendar days before bids are due.
 - (2) All construction trade journals identified pursuant to Public Contract Code 22036.
 - b. The District shall review the informal bids that were submitted and award the contract, except that:
 - (1) If all bids received through the informal process are in excess of \$200,000, the contract may be awarded to the lowest responsible bidder, provided that the Governing Board adopts a resolution with a four-fifths vote to award the contract at \$212,500 or less and the Board determines the District's cost estimate is reasonable.
 - (2) If no bids are received through the informal bid procedure, the project may be performed by District employees by force account or negotiated contract.

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3. Public projects of more than \$200,000 shall, except as otherwise provided by law, be subject to formal bidding procedures, as follows: (Public Contract Code 22032, 22037, 22038)

a. Notice inviting formal bids shall state the time and place for receiving and opening sealed bids and distinctly describe the project. The notice shall be disseminated in both of the following ways:

(1) Through publication in a newspaper of general circulation in the District's jurisdiction or, if there is no such newspaper, then by posting the notice in at least three places designated by the District as places for posting its notices. Such notice shall be published at least 14 calendar days before the date that bids will be opened.

(2) By mail and electronically, if available, by either fax or email, to all applicable construction trade journals identified pursuant to Public Contract Code 22036. Such notice shall be sent at least 15 calendar days before the date that bids will be opened.

In addition to the notice required above, the District may give such other notice as it deems proper.

b. The District shall award the contract as follows:

(1) The contract shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the District may accept the one it chooses.

(2) At its discretion, the District may reject all bids presented and declare that the project can be more economically performed by District employees, provided that the District notifies an apparent low bidder, in writing, of the District's intention to reject the bid. Such notice shall be mailed at least two business days prior to the hearing at which the District intends to reject the bid.

(3) If no bids are received through the formal bid procedure, the project may be performed by District employees by force account or negotiated contract.

(cf. 3311 - Bids)

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Contractors List

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Public Construction Cost Accounting Commission.

Pre-Solicitation Preparation

Prior to soliciting any contracts for construction that are subject to requirements for competitive bidding or best value procurement, or contracts for professional services for a school construction project, the District shall to the extent feasible and possible fully develop the intended scope of work or services, determine which project delivery method will be used, and decide how the project will be managed.

Factors to be considered prior to procurement may include, but are not limited to the following:

1. District staff capabilities;
2. time considerations;
3. project complexity;
4. degree of District control and oversight desired;
5. type of contractors needed or desired;
6. project budget;
7. predominant regional trade practices;
8. appropriate community and business participation; and
9. level of acceptable legal and financial risk to the District.

Advertised/Competitive Bids

The District shall advertise for any of the following: (Public Contract Code 20111)

1. A public project contract that involves an expenditure of \$200,000 or more as defined in Public Contract Code 22032, including a contract for construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition, and repair work involving a District owned, leased, or operated facility.

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2. A contract that exceeds the amount specified in law as adjusted by the Superintendent of Public Instruction for any of the following:

a. The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the District.

(cf. 3230 - Federal Grant Funds)

b. Services, not including construction services or special services and advice in accounting, financial, legal, or administrative matters.

c. Repairs, including maintenance that is not a public project.

“Maintenance” means routine, recurring, and usual work for preserving, protecting, and keeping a District facility operating in a safe, efficient, and continually usable condition for the intended purpose for which it was designed,

improved, constructed, altered, or repaired. “Maintenance” includes, but is not limited to, carpentry, electrical, plumbing, glazing, and other craft work designed to preserve the facility, as well as repairs, cleaning, and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting, or decorating other than touchup. (Public Contract Code 20115)

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally-owned transit system, or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder. (Education Code 39802)

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Instructions and Procedures for Advertised Bids

Except as otherwise provided in the Administrative Regulation or applicable law, the Superintendent/designee shall call for bids by placing a notice at least a week for two weeks in a local newspaper of general circulation published in the District, or if no such newspaper exists, then in some newspaper general circulation circulated in the county. The Superintendent/designee may also post the notice on the District's website or through an electronic portal. The notice shall state or provide references to the work to be done, materials or supplies to be furnished, critical dates and deadlines, including the time, date, and location where bids will be opened, and information about specific format and content requirements for submissions. To the extent provided in the bid solicitation documents, the District may accept a bid that has been submitted electronically or on paper. (Public Contract Code 20112)

The notice shall contain the time, date, and location of any mandatory pre-bid conference, site visit, or meeting; and details when and where project documents, including final plan and specifications, are available. In addition, the District's contracting preferences or requirements, such as prevailing wage; small, local or minority owned businesses and bonding requirements will be included. Any such mandatory visit or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

Bid instructions and specifications shall include the following requirements and information:

1. All bidders shall certify in writing, the minimum, if not exact, percentage of post-consumer materials in products, materials, goods, or supplies offered or sold. (Public Contract Code 22152)
2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20111)
 - a. Cash.
 - b. A cashier's check made payable to the District.
 - c. A certified check made payable to the District.
 - d. A bidder's bond executed by an admitted surety insurer and made payable to the District.

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- The security of unsuccessful bidders shall be returned in a reasonable period of time, but in no event later than 60 days after the bid is awarded. (Public Contract Code 20111)
3. When a standardized proposal form is provided by the District, bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)
 4. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
 5. When two or more identical bids are received, the Superintendent/designee may determine, by lot, which bid shall be recommended for acceptance by the Board. (Public Contract Code 20117)
 6. If the District requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in Item a below shall be used: (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest total of the bid prices on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
 - c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation and added to or subtracted from the base contract, are less than or equal to a funding amount publicly disclosed by the District before the first bid is opened.
 - d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the District before the ranking of all bidders from lowest to highest has been determined. (Public Contract Code 20103.8)

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7. In determining the lowest bid, the District shall consider only bids that are responsive to the bid specifications and that have been submitted by responsible bidders.
 - a. When a bid is determined to be non-responsive, the District shall notify the bidder and give it an opportunity to respond to the determination.
 - b. When a bidder is determined to be non-responsible, the District shall notify the bidder of its right to present evidence of its responsibility at a due process hearing.
8. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.
9. After being opened, all submitted bids become public records pursuant to the California Public Records Act, Government Code Section 6250, et seq., and shall be made available for review pursuant to law, Board policy, and administrative regulation.

(cf. 1340 – Access to District Records)
(cf. 3580 – District Records)

Alternative Bid Procedures for Technological Supplies and Equipment

Rather than seek competitive bids, the Board may use competitive negotiation when it makes a finding that a District procurement is for computers, software, telecommunications equipment, microwave equipment, or other related electronic equipment and apparatus. Competitive negotiation shall not be used to contract for construction or for the procurement of any product that is available in substantial quantities to the general public. (Public Contract Code 20118.2)

(cf. 3230 - Federal Grant Funds)
(cf. 3311 - Bids)
(cf. 3312 - Contracts)

Whenever the competitive negotiation process is determined to be appropriate for such procurements, the District shall use the following requirements: (Public Contract Code 20118.2)

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1. The Superintendent/designee shall prepare a request for proposals (RFP) that shall be submitted to an adequate number of qualified sources as determined by the District to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the RFP shall be published at least twice in a newspaper of general circulation at least ten days before the date for receipt of the proposals.
3. The Superintendent/designee shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the RFP is received.
4. The RFP shall identify all significant evaluation factors, including price, and their relative importance.
5. The Superintendent/designee shall provide reasonable procedures for the technical evaluation of the RFPs received, the identification of qualified sources, and the selection for the award of the contract.
6. The Board shall award the contract to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the District with price and all other factors considered.
7. If the Board does not award the contract to the bidder whose proposal contains the lowest price, then the Board shall make a finding setting forth the basis for the award.
8. The Board, at its discretion, may reject all proposals and request new RFPs.

Provisions in any contract concerning utilization of small business enterprises that are in accordance with the RFP shall not be subject to negotiation with the successful proposer. (Public Contract Code 20118.2)

Bids Not Required

Without advertising for bids and upon a determined that it is in the best interest of the District, the Board may authorize another public corporation or agency, by contract, lease, requisition, or purchase order, to lease data-processing equipment or to purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the District in the manner that the other public

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corporation or agency is authorized to make the leases or purchases from a vendor (“piggyback”). Alternatively, if the public corporation or agency has an existing contract with a vendor for the lease or purchase of personal property, the District may authorize the lease or purchase of personal property directly from the vendor and make payments under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

(cf. 3300 – Expenditures/Expending Authority)

Supplementary textbooks, library books, educational videos, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

(cf. 6161.1 – Selection and Evaluation of Instructional Materials)
(cf. 6163.1 – Library/Media Centers)

Perishable foodstuffs and seasonal commodities needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code 38083)

(cf. 3551 – Food Service Operations/Cafeteria Fund)

Bids shall also not be required for day labor under circumstances specified in law, and noted below. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects not subject to formal or informal bidding requirements, as provided by Public Contract Code 22030 et seq., performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (Public Contract Code 22032)

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined in Public Contract Code Section 22002(d)

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Each public agency that elects to become subject to the uniform construction accounting procedures set forth in Article 2 (commencing with Section 22010) shall enact an informal bidding ordinance to govern the selection of contractors to perform public projects pursuant to subdivision (b) of Section 22032. The ordinance shall include all of the following:

- a) In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.
- b) In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050). (Public Contract Code 22035).

By a four-fifths vote of the governing board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By a four-fifths vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within 7 days of its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed). (Public Contract Code 22050)

Sole Sourcing

In any contract for the construction, alteration, or repair of school facilities, the Superintendent/designee shall ensure that the bid specification:

1. Does not directly or indirectly, limits bidding to any one specific concern
2. Does not call for a designated material, product, thing, or service by a specific brand or trade name, unless the specification designating the specific material, product, thing, or particular brand name is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service.

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In such cases, the bid specification shall provide a time period, before and/or after the award of the contract, for the contractor to submit data substantiating the request for substituting the designated material, product, thing, or service. If no such time period is specified, the contractor may submit the data within 35 days after the award of the contract.

When the bid is for a roof project, a material, product, thing, or service is considered "equal" to the one designated if it is equal in quality, durability, design, and appearance; will perform the intended function equally well; and conforms substantially to the detailed requirements in the bid specification. (Public Contract Code 3002)

However, the Superintendent/designee may designate a specific concern, material, product, thing, or service by brand or trade name (sole sourcing) if the Board has made a finding, described in the invitation for bids or RFP, that a particular material, product, thing, or service is designated for any of the following purposes: (Public Contract Code 3400)

1. To conduct a field test or experiment to determine its suitability for future use.
2. To match others in use on a particular public improvement that has been completed or is in the course of completion.
3. To obtain a necessary item that is only available from one source.
4. To respond to the Board's declaration of an emergency, as long as the declaration has been approved by four-fifths of the Board when issuing the invitation for bid or RFP.

Prequalification Procedures

For any contract for construction as to which bids are legally required, the Board may require in accordance with Public Contract Code Section 20111.5 that each prospective bidder complete and submit a standardized questionnaire and financial statement. For this purpose, the Superintendent/designee shall supply a form which requires a complete statement of the bidder's financial ability and experience in performing public works.

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Prospective bidders shall submit the questionnaire and financial statement at least ten (10) days before the date fixed for public opening of sealed bids. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5)

For purposes of the foregoing, the Superintendent/designee shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid. Bidders must be deemed prequalified by the District at least one day before the fixed bid opening date. (Public Contract Code 20111.5)

The District may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

To the extent the District is required to prequalify bidders pursuant to Public Contract Code Section 20111.6, the prequalification procedures shall comply with the requirements of Public Contract Code Section 20111.6.

Appeal Procedures

Contractors will be allowed to appeal a negative prequalification determination in accordance with procedures set forth in the prequalification documentation. There is no appeal from a refusal for an incomplete or late application. Without a timely appeal, the Contractor waives any and all rights to challenge the decision of the District, whether by administrative or judicial process or any other legal process or proceeding. The decision of the Appeals Panel shall be the District's final administrative decision.

In conjunction with this Prequalification Policy, the District hereby establishes a Bidder Prequalification Appeals Panel ("Appeals Panel") consisting of the following three members or their designee(s):

1. District Director of Maintenance and Operations.
2. District Purchasing Manager.
3. A member of an outside agency.

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The sole issue before the Appeals Panel shall be the scoring of a Contractor. The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process. To the extent reasonably feasible, all elements of a prequalification questionnaire that require factual verification shall be reviewed and verified by District staff prior to review by the Appeals Panel.

Rejection of All Bids

The District shall endeavor to avoid issuing a request for bids if the District does not ultimately intend to award a contract. The District may reject all bids received and, in such event, shall notify all bidders within a reasonable time of the making of such decision. The notice of rejection of all bids shall include a brief description of the District's rationale for rejecting all bids. District staff may elect to provide such notice (i) by U.S. mail or e-mail to each bidder, (ii) or by posting the notice on a publicly-available portion of the District website.

Notice of Intent to Award

After the District has made a final award determination, but prior to the actual award of the contract, the District shall provide to all responsive bidders, via mail or electronic transmission, a notice of intent to award the contract that informs such bidders of the contractor(s) to which the contract(s) will be awarded.

Publication of Bid Results

Following the award of all competitively bid contracts, bid results **may** shall be published on the District's website or alternate website available to the general public. The information to be published may include (i) the company names of all bidders; and (ii) the amount of bids. Published information may also include additional information if it is available or applies to the contract in question, such as proposed contract documents, the District's original cost estimates, and bid walk attendee information.

Protests by Bidders

A contractor that submitted a bid for work may protest the award of the contract for that work if the contractor believes that the award is inconsistent with Board policy, the bid's specifications, or is not in compliance with the law.

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Each such protest must be filed in writing with the Superintendent/designee by 4 p.m. of the fifth (5th) business day following the bid opening. The protest must set forth, among other relevant information as determined by the protester or required by the solicitation documents, all of the following:

1. A complete statement of any and all bases for the protest.
2. All documents supporting or justifying the protest.
3. The specific portions of all documents which form the basis for the protest.
4. The name, address and telephone number of the person representing the protesting party.

Any bid protest not conforming to the foregoing shall be rejected by the District as invalid and shall constitute a waiver of the bidder's right to protest the award of the contract.

The Superintendent/designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Superintendent/designee may also convene a meeting with the bidder in order to attempt to resolve the problem.

The Board of Education will render a final determination and disposition of a bid protest. Action by the Board of Education relative to a bid award shall be final and not subject to appeal or reconsideration.

The District may extend the time limit for filing any bid protest by ten days if, prior to 4 p.m. on the third business day following bid opening, a bidder submitted a valid public records request seeking information specifically related to whether the award of the contract would be inconsistent with Board policies or applicable law. In such event, a protest must be filed with the District by 4 p.m. of the fifteenth day following opening of bids.

The protest procedures shall be the bidder's sole and exclusive method for protesting the bid of another bidder. Failure to comply with these procedures shall constitute a waiver of any and all other rights a bidder may have to protest the other bid(s), including, without limitation, filing a claim pursuant to the Government Claims Act and other legal proceedings.

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Protests of Contract Awards Based on Review of Non-Price Criteria

The protest procedures set forth in the preceding section shall also apply to the award of contracts through competitive negotiation or alternate process other than traditional competitive bidding, provided that such protests (i) shall be limited to challenges based on noncompliance with Board policy or applicable law; and (ii) except as otherwise provided herein, shall be filed in writing with the District by 4 p.m. of the fifth (5th) business day following the opening of proposals.

All solicitation materials circulated by the District for bids or proposals shall include a description of applicable protest procedures.

All proposals for construction of school facilities submitted in response to RFPs become public records pursuant to the California Public Records Act, Government Code 6250, et seq., and shall be made available for review pursuant to law, Board policy, and administrative regulation, except to the extent that such proposals contain proprietary information and/or are otherwise exempt from disclosure pursuant to the Public Records Act or other applicable law.

Post-Award Debriefing

Following the award of each contract awarded based on review of non-price criteria, the District will offer a post-award debriefing for any unsuccessful proposers that request such a debriefing in writing within three (3) days after the date of contract award. The post-award debriefing will provide:

1. A general description of the District's evaluation of the relative strengths and weaknesses of the proposal based on use of applicable criteria to rate or rank proposals.
2. Responses to questions regarding conformance of the selection process with District policies and applicable legal requirements.

The debriefing will not include point-by-point comparisons nor shall it reveal any proprietary or other confidential information of any other proposer, including, without limitation:

1. Trade secrets.
2. Privileged or confidential manufacturing processes and techniques.

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3. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.
4. Names of individuals providing reference information about the awarded contractor's past performance.

Conflict of Interest

District staff and officials shall excuse themselves from participating in a particular procurement process and/or decision to award a contract if such participation would constitute or result in a conflict of interest pursuant to Government Code Section 1090 or Section 87000 et seq.

No "Pay to Play"

In connection with the proposed award by the Governing Board of any Bond Funded Contract, the District shall make publicly available, by means of the staff report or docket for the proposed award, the name of any Person: (i) who contributed \$1,000 or more to any campaign for a District candidate or bond program, and who submitted any bid or proposal for that Bond Funded Contract; or (ii) who contributed \$1,000 or more to any foundation established by the District, and, within the immediately preceding four years, such foundation made any financial contribution to a District bond campaign. The staff report or docket also shall specify the amount of the financial contribution made by the Person.

For purposes of this No Pay to Play policy: (i) "Bond Funded Contract" means any contract for construction, maintenance, equipment, labor, engineering, architecture, program or project management, legal or financial services, or any other similar expense, that is paid from bond proceeds; and (ii) "Person" means any individual, sole proprietor, partnership, corporation, trade association, union, council of unions, or any registered political committee administered by such Person.

Regulation

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CHULA VISTA ELEMENTARY SCHOOL DISTRICT
Chula Vista, California