

REAL PROPERTY DEVELOPMENT SERVICES

POLICY TO COMPLY WITH PUBLIC CONTRACT CODE SECTIONS 10510.4 THROUGH 10515

This policy was developed in response to requirements of California Public Contract Code Sections 10510.4 to 10515 by the Facilities Administration Department of the University of California Office of the President.

All University of California contracts pertaining to Real Property Development Services (“RPD Services”), as defined herein shall comply with this policy. This policy is in addition to, and does not replace, existing University policies concerning procurement of professional services and award of contracts generally. Architectural, engineering, surveying, construction project management, or environmental services provided to the University for University projects generally are subject to other relevant provisions of the Facilities Manual.

A. PROHIBITED ACTIVITIES

No employee acting on behalf of the University of California in connection with the University’s entry into any agreement, license or lease which provides for RPD Services, shall carry on any unlawful activity including, but not limited to, providing or receiving rebates, kickbacks, or other unlawful consideration. A University employee is specifically prohibited from participating in the selection of a provider of RPD Services with whom he or she has a financial relationship or other conflict of interest, as defined by University policy.

B. DEFINITIONS

For purposes of this policy, RPD Services is defined as those services provided to the University by a Real Property Developer in connection with development of a developer-owned project on land owned or controlled by the University (“Project”) pursuant to an agreement with the University. A Real Property Developer is defined as a private entity that provides RPD Services to the University (either directly or through person or entities under contract to an Real Property Developer) pursuant to an agreement with the University (“RPD”). RPD Services may include, but are not limited to, environmental analysis, landscape planning, site design, market and financial feasibility, and other consulting services that an RPD (or persons or entities under contract to an RPD) may perform for a Project, whether such services are undertaken by an RPD pursuant to an agreement, a license or a lease. Land is “controlled” by the University when the University has day-to-day operational control and decision-making authority through a ground lease, management contract, option to acquire or other means; land is not “controlled” by the University when the University is merely a tenant in space in a building located on such land.

For purposes of this policy, RPD Services do not include any of the following services:

1. Services provided to the University with respect to real property that is not owned or controlled by the University;
2. Services provided to the University with respect to the planning, design, construction or installation of improvements that, upon completion, are to be owned by the University;
3. Services provided to the University in connection with the sale of real property owned by the University;
4. Business obligations of a lessee leasing real property owned by the University when the lease does not provide for the lessee to provide any consulting or professional services for the benefit of the University; or
5. Consulting and professional services provided by persons or entities other than an RPD.

CITATION: Public Contract Code section 10510.4(e)

C. REQUIRED ADVERTISING FOR RPD SERVICES

If RPD Services are sought for a Project, the University shall conduct the solicitation for such services in conformance with this policy. Prior to entering into an agreement, license or lease that includes providing RPD Services, the University shall solicit RPD Services for the Project as follows:

1. Through an advertisement in the [State Contracts Register](#); and,
2. Through an advertisement on both the Real Estate Services Group (“RESG”) Website and on a Website that has been designated by the University office directly responsible for soliciting the RPD Services (“Business Unit”) as the appropriate Website for public announcement of contracting and/or development opportunities administered by that Business Unit; and,
3. Through an advertisement on a Website that provides statewide announcement to the appropriate professional societies or organizations of persons that perform such RPD Services. If no such Website is available, the Business Unit may elect to comply with the requirement in this subsection through alternative advertising methods, subject to approval by RESG, provided that such efforts are designed to maximize notice of the Project to the real estate development community.

The advertisements required by this policy shall be published electronically, continuously, for a reasonable time in advance of the deadline for submission of RPD Services proposals to the University for the advertised Project.

The advertisements shall identify the general nature of the Project, the selection criteria to be used in evaluating proposals, and the agreements or leases that the University anticipates will be necessary in order to accomplish the RPD Services for the Project that are the subject of the advertisement. In order to insure that RPD Services are provided at a cost that is fair and reasonable to the University, the advertisement may include a general description of the business terms that the University seeks with regard to the proposed transaction.

The Business Unit soliciting responses to its advertisements shall maintain documentation of its efforts performed pursuant to the requirements of this policy.

A Business Unit shall advertise an opportunity to enter into a ground lease with the University in the manner required by this policy unless the Business Unit obtains a written waiver of the advertising requirements of this policy from RESG. Advertisement of the opportunity to enter into a ground lease with the University is typically in the best interest of the University. RESG may, however, grant a waiver of the requirement to advertise a ground leasing opportunity when such advertisement is not required by the Public Contract Code and when such waiver is in the best interest of the University.

Citation: Public Contract Code section 10510.7(b).

D. DISCUSSION WITH PROPOSAL RESPONDENTS

With regard to each Business Unit's solicitation of RPD Services, the Business Unit shall evaluate all proposals received in response to the advertisement, as well as any other applicable proposals in its files that pertain to the RPD Services required for the Project. The Business Unit shall then select and meet and confer, either in person or by telephone, with no fewer than three proposing respondents regarding the Project. Records of the date, time, and nature of discussions with all selected respondents shall be maintained by the Business Unit. If the advertisement results in fewer than three proposals, then the Business Unit shall meet and confer regarding the Project with all such respondents and document its efforts to receive submissions from additional RPD Services providers.

Citation: Public Contract Code section 10510.7(b)

E. SELECTION OF SERVICE PROVIDER

Following the meetings required above, the Business Unit shall select, from the respondents interviewed pursuant to D above, the three most highly qualified respondents (or all respondents if the advertisement results in fewer than three proposals) in order of preference, based upon criteria established and published by the Business Unit. The Business Unit shall then select the best qualified respondent as the provider of RPD Services with whom the Business Unit intends to negotiate an agreement, license or lease (or, if multiple agreements are contemplated, an initial agreement). The Business Unit shall provide written notice to such respondent that it has been selected to engage in further negotiations.

Citation: Public Contract Code section 10510.5(a) and 10510.8

F. NEGOTIATION OF CONTRACT

RESG, in conjunction with the Business Unit, shall commence negotiations with such selected respondent concerning RPD Services, whether in an agreement, license or lease (or, in the case of multiple contemplated agreements, the initial agreement) within fourteen (14) days after such notification. The Business Unit shall attempt to execute an RPD Services agreement within forty-five (45) days after such notice, unless it would be impractical to negotiate the agreement within that period of time, in which case the Business Unit shall promptly provide written notice to the selected respondent that the agreement cannot be negotiated within forty-five (45) days.

If multiple agreements are contemplated with regard to the project, and the later agreement (or agreements) to be completed cannot reasonably be negotiated within forty-five (45) days, then the Business Unit shall promptly provide written notice to the selected respondent that the latter agreement(s) cannot be negotiated within forty-five (45) days. If the Business Unit intends to enter into an initial agreement covering only the first phase or component of the Project, it shall promptly provide written notice to the selected respondent (i) stating that the negotiations will only address such first phase or component, and (ii) estimating the time frame for commencing negotiations for any additional agreement(s) covering future phases or components.

Any contracts negotiated pursuant to the section shall only provide compensation to the RPD that is determined by the University to be fair and reasonable to the University.

If negotiations are successful, the Business Unit may enter into a contract with the selected respondent to provide RPD Services for the Project. Entering into an initial contract with the selected respondent shall not imply an obligation on the part of the University to enter into subsequent contracts concerning that same Project.

Nothing in this policy alters the prior responsibilities and delegations of authority for negotiation and execution of agreements, licenses or leases within the University.

Citation: Public Contract Code sections 10510.6 and 10510.8

G. TERMINATION OF NEGOTIATIONS

If RESG and the Business Unit reach an impasse in negotiations with the selected respondent, the Business Unit may terminate negotiations with the selected respondent. Following the termination of such negotiations, RESG and the Business Unit may enter into negotiations with the next most qualified respondent selected in Paragraph E above, or may issue a new advertisement for the RPD Services the University requires consistent with the requirements of this policy, and may engage in a new selection process based upon that new advertisement, or it may abandon the selection process altogether.

Citation: Public Contract Code section 10510.6.

H. SUCCESSIVE CONTRACTS

A Business Unit may enter into successive contracts with a single entity for providing RPD Services pertaining to a single Project, provided that the general scope of work and the basis for compensation payable to the RPD has been advertised in accordance with this policy.¹

The scope of transactions subject to this policy is limited, as defined above. If a Business Unit is uncertain whether this policy applies to a particular transaction, it should seek advice from RESG and the Office of General Counsel.

Citation: Public Contract Code section 10515(b).

I. RESG APPROVAL

All actions of the Business Unit pursuant to this policy require concurrence or prior approval by RESG.

¹ If, prior to January 1, 2004, a Business Unit has entered into a predevelopment agreement, reimbursement agreement, or similar agreement providing for RPD Services, the Business Unit may enter into successive contracts with that developer in order to accomplish the development project, so long as the successor contracts are advertised and competed in accordance with the requirements of this policy. In these limited circumstances, the University may, in the process of selecting a contracting party for RPD Services, give weight to the results of a publicly advertised developer selection process that occurred prior to January 1, 2004, and to the existence of a preliminary agreement with the developer so selected, so long as the existence of the prior selection process and the prior agreement is disclosed in the advertisements required by this policy.