

ADMINISTRATIVE PROCEDURE 6340
BIDS AND CONTRACTS

The Chancellor directs that the following procedures and regulations apply to Contracts in the Peralta Community College District:

- I. **Definitions:** This administrative procedure uses the following terms as defined below:
- A. **Goods:** Any tangible product. Goods include, but are not limited to, “off-the shelf” computer software and utilities, books, supplies, equipment, etc.
 - B. **Services:** Any deliverable resulting from labor performed specifically for the District. The service may result from the application of physical or intellectual skills. Services include, but are not limited to, repair work, consulting, maintenance, data processing, custom software design or coding, etc. Excludes Professional services as defined in Government Code Sections 4525 et seq. and Special Services 53060 et seq.
 - C. **Construction:** A project that includes all the work needed to produce a complete and usable facility, or to remodel an inadequate or damaged facility. Construction includes excavation, building, installations, related infrastructure, landscaping, etc.
 - D. **Maintenance:** Routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition, for which it was designed, improved, constructed, altered or repaired. “Facility” means any plant, building, structure, ground facility, utility system, or real property. This definition of “maintenance” expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craft work designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures. This definition does not include among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces. This definition does not include painting, repainting, or decorating other than touchup.
 - E. **Public Project:** Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving or painting or repainting of any publicly owned, leased, or operated facility. “Public Project” does not include maintenance work.
 - F. **Bid threshold:** Any purchase over \$200,000 for public projects, or \$95,200 in 2020 (adjusted annually by the Board of Governors of the California Community Colleges) for equipment, materials or supplies, services (except for construction services) and repairs that are a not public project as defined in subdivision (c) of Public Contract Code Section 2202, including maintenance as defined in Public Contract Code Section 20656.
 - G. **Notice to Bidders:** A formal invitation to bid that published in accordance with Education Code Section 81641 and may be sent to prospective bidders when Goods or Services are

desired in an amount that is higher than the then applicable bid threshold (the “Bid Threshold”) set by the California Community Colleges Board of Governors (“Board of Governors”). Such notice will state the work to be done or materials or supplies to be furnished and the time when and the place where the bids will be opened.

- H. **Request for Qualifications (RFQ):** A notice calling for a statement of qualifications that may be sent to prospective proposers for professional services, special services, design-build services or when the Goods or Services desired are below the bid threshold, The RFQ shall be in a form that conforms to applicable California laws and any other District requirements. The outcome of an RFQ is a pool of qualified proposers/vendors.
- I. **Request for Proposal (RFP):** A formal, notice calling for proposals published in accordance with Education Code Section 81641 and may be sent to prospective-proposers for professional services, special services, design-build services or when the Goods or Services desired are below the bid threshold. The RFP shall be in a form that conforms to applicable California law and any other District requirements. The award of contract, if any, is based on the criteria stated in the RFP.
- J. **Price Quotations:** Written price quotations are used for purchases less than \$95,200 and informal competitive bidding for goods or services under the applicable bid threshold.
Verbal Quotes are not accepted

II. District Business Processes and Contract Types

- A. **Delegation of Authority to Enter Into and Amend Contracts:** When transactions do not exceed dollar limits established by statute or this administrative procedure, the Chancellor and the Vice Chancellor, Finance and Administration may:
 1. Contract for goods, services, equipment and rental of facilities as authorized by statutes in conformance with any specified limitations or requirements.
 2. Amend the terms and conditions of any contractual arrangement provided that the total expenditure of funds and term of the contract do not exceed the limitations set forth in applicable state or federal law, District policy, District Regulations, and/or college budget allocations.
 3. The Chancellor may delegate to the College Presidents the authorization to enter into, and/or amend, professional or personal service contracts or amendments (excluding employment contracts, contracts for interim employees or labor (collectively “Personnel Services”). and all other agreements) College Presidents may commit only their respective College’s financial resources in amounts, that total less than \$5,000 per contract, provided that the total dollar amount in any given fiscal year of: (i) any one contract, as amended, or (ii) series of contracts with regards to a specific vendor or a specific project, do not exceed in the aggregate \$125,000. Such contracts or amendment must be approved in accordance with then current District contracting requirements and use the applicable District services agreement template.

4. Each Contract and Contract amendment amounting to more than \$125,000 require prior Board of Trustees authorization before they can be executed by the Chancellor or the Vice Chancellor, Finance and Administration.
 5. No other employee is authorized to enter into or amend or to commit District financial resources.
 - a. Contracts under \$50,000 are ratified by the Board in a monthly report after execution (not applicable to public works contracts).
 - b. All transactions, purchase orders, contracts and amendments regardless of dollar amount must be ratified by the Board of Trustees within 60 days, if not approved in advance as otherwise required herein
- B. **Contract Types:** Contracts are classified as continuing price, lease/rental, repair/maintenance, personnel services, construction and income generating. District regulations for fulfilling these requirements are summarized below:
1. **Continuing Contracts:** Contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired, or for materials or supplies to be furnished or sold to the District with an accepted vendor over a period of time; such Contracts are limited by California Education Code Section 81644 as follows:
 - a. For work, services, apparatus or equipment: not to exceed five (5) years.
 - b. For materials or supplies: not to exceed three (3) years.
 2. **Personnel Services:** The Chancellor's approval shall be required for any contracts relating to Personnel Services (defined above in Section II.A.4 above).
 3. **Constructions and/or Improvement of Grounds (Public Projects)** Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving or painting or repainting of any publicly owned, leased, or operated facility.
 - a. **Public Works Projects Pursuant to AP 6345**
 - The district has adopted the California Uniform Public Construction Cost Accounting Act (CUPCCAA).
 - CUPCCAA bid thresholds for construction services contracts for agencies, including school and community college districts, are follows:
 - Public projects of \$60,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order without bidding;
 - Public projects of \$200,000 or less may be awarded by informal bidding procedures;
 - Public projects of more than \$200,000 must be awarded by formal bidding procedures.
 - b. **Repairs:** As repairs are included in the definition of "public project," if a contract for

repair is under \$60,000 (PCC section 22032), it may be awarded without competitive bidding and executed without prior Board of Trustees approval. Repair work over \$60,000 and up to \$200,000 may be awarded by informal bidding procedures, under the Uniform Public Construction Cost Accounting Act (AP 6345).

- c. **Bonds:** Material and Labor Performance Bonds shall be issued for not less than one hundred percent (100%) of the contract price by a surety or sureties satisfactory to the District and in a form prescribed by the District in which expenditures for a public project exceed \$25,000.
 - d. **Acceptance of Completion for Material and Labor Contract:** When the entire work has been completed, as provided for in the Contract and any amendments to the Contract, the Vice Chancellor of General Services shall submit a recommendation for Board of Trustees to accept the completed project. After acceptance, a Notice of Completion of Contract shall be filed with the County Recorder.
 - e. **Certified Small Business or Disabled Veteran Business Enterprise:** Pursuant to Public Contract Code Section 20651.2, the Board may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than two hundred fifty thousand dollars (\$250,000), to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, if the District obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more disabled veteran business enterprises.
 - f. **Best Value Contracts:** When the District determines that it can expect long-term savings through the use of life cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the District may provide for the selection of the lowest responsible bidder on the basis of best value pursuant to policies and procedure adopted by the Board of Trustees in accordance with Public Contract Code Section 20651.7. "Best Value" means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the Board achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.
4. **Maintenance:** The Vice Chancellor, General Services is responsible for any contracts relating to the maintenance, minor alterations and improvements of District grounds, buildings, facilities, and similar work but requires prior Board of Trustees approval for contracts over \$95,200. Contracts for Maintenance work more than \$95,200 must be formally bid. Maintenance work less than \$95,200 in 2020 (or as adjusted annually by the Board of the Community Colleges), may be awarded pursuant AP 6345 Informal Bidding Procedures
 5. **"Piggyback" Purchases from Contracts Bid by Other Public Agencies:** The Board of Trustees may allow the District, without advertising for bids, if the Board of Trustees has determined it to be in the best interests of the District, authorize by contract, lease, requisition or purchase order, any public corporation or agency to

lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property for the District pursuant to California Public Contract Code Section 20652 and Education Code Section 72670.5. The District may purchase materials, equipment or supplies and services through the Department of General Services in accordance with Public Contract Code Sections 10298 or 20653. The District may purchase materials, equipment or supplies under the same terms and conditions as are specified in a contract lawfully awarded by the University of California or the California State University in accordance Public Contract Code Section 20653.5 or Education Code Section 81646. The District may purchase materials, equipment, or supplies and services from another public agency by agreement, jointly exercising any power common to the contracting parties, if authorized by their legislative or other governing bodies, in accordance with Government Code Section 6500 et seq.

6. **Leasing of Equipment or Service Systems (Lease-Purchase Agreements):** The District may, as lessee, enter into a lease or lease-purchase agreement with any person, firm, corporation or public agency for (1) school buses, (2) other motor vehicles, (3) test materials, educational films, and audiovisual materials, and (4) all other items defined as equipment or service systems in the Community College Budget and Accounting Manual.
 - a. The District is required by statute to comply with all applicable bid and contract provisions specified in the California Education Code (beginning with Section 81641) and by Section 20651 of the California Public Contract Code prior to entering into an agreement. Each contract shall show the total price for an outright purchase of any item and its total cost for the entire specified term of the contract.
 - b. The term of any lease or lease-purchase agreement shall not exceed the estimated useful life of the item but in no event shall the term exceed 10 years. A lease, but not a lease-purchase agreement, may be renewable at the option of the lessee and the lessor, jointly, at the end of each term at a rate not more than 7 percent annually above the rate set pursuant to the existing agreement. In no event shall the combined period of the original lease and renewals or extensions exceed 10 years. Any contract for the lease or lease-purchase of equipment or service systems which was in existence prior to the effective date of this act shall remain in effect and such terms are hereby ratified.
7. **Income Generating Contracts** may be issued when the District provides services or when the District acts as lessor other than for Civic Center Act permit activities (see AP 6700), including lease of surplus district property. The District is authorized to lease, or lease with option to purchase, any land, buildings, or equipment it determines is not needed for District purposes. Such leases and leases with options to purchase to nonpublic agencies or individuals shall comply with the provisions of California Education Code Sections 81450, 81452, 81453, 81454, and 81553.

III. **Implementation:** To facilitate the implementation of this administrative procedure, the Vice Chancellor, Finance and Administration shall have the authority to issue contracting, purchasing and operating procedures and authorize standard forms consistent with, and in furtherance of the finance, accounting, accounts payable, purchasing, information technology, internal auditing, and

budgeting activities of the District; subject to the limits established in the California Education Code and/or other laws pertaining to the taking of bids and issuance of contracts and subject to any requisite approval of the Chancellor or formal procedures first requiring vetting via the District's shared governance process.

IV. **General Requirements:** The following information identifies some, but not all, general statutory requirements applicable to public agency contracting and procurement:

- A. Employees of the District, members of the Board of Trustees, and members of Citizens' Oversight Committees shall not have an interest in any contract, other than their individual employment agreement, made by the Board. (California Education Code 72533)
- B. In addition, California statute prohibits "offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the making of any contract to which the board of which he or she is a member is a party, or the acceptance of any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor" (California Education Code 72530(a))."
- C. A contract obtained by incorrect means is void (California Education Code 72530(b)).
- D. The District cannot be legally bound to any contract unless and until that contract is authorized or ratified by the Board of Trustees. (California Education Code 81655).
- E. Any employee who signs a contract in violation of law or in violation of his or her authority is subject to disciplinary action. In addition, as allowed by California Education Code Section 81655 and 81656, any employee committing malfeasance may be personally liable to the District for any and all moneys the District paid as a result of such action. District funds incurred as a result of malfeasance.
- F. **Approved Vendor List:** The Vice Chancellor, Finance and Administration shall ensure an approved vendor list is maintained and ensure that bids, if and when solicited, are solicited from a pool that includes small local businesses, and disabled veterans as specified by statute. No vendor can be placed on the approved vendor list until the following are submitted:
 - (1) Complete vendor information including name, address, and phone number, and named address of key officers.
 - (2) Statement of qualifications.
 - (3) Taxpayer identification number as required by the Internal Revenue Services (IRS).
 - (4) Affirmative Action Status Form.

V. **Contractual Elements and Requirements**

- A. An appropriate budget-line for the contract along with adequate funding to encumber the contract must be developed before a contract is submitted for processing. Adequate funding includes both an "unencumbered balance" in the line item and sufficient cash reserves in the fund to pay subsequent invoices within thirty days of receipt. The Vice

Chancellor of Finance and Administration shall notify all managers of the College if insufficient cash is available to pay invoices. When inadequate funding exists to encumber the entire cost of the contract, it is permitted to submit a partially encumbered contract which amount shall have a specified limited "work authorization" scope of work and dollar amount. Such contracts shall contain language that completion of the contract is subject to issuance of subsequent "work authorizations," as determined by the District in its sole discretion.

B. ***Non-Discrimination Certification:*** Any vendor performing work or performing services for the District must certify that:

1. All vendors must agree to comply with applicable federal and California anti-discrimination laws, including but not limited to the California Fair Employment Housing Act beginning with Government Code Section 12900.
2. In addition, the vendor must agree to require compliance by all subcontractors it employs or engages to perform work.

C. ***Payment of Prevailing Wages:*** If applicable, vendors are required to certify compliance with California Labor Code Sections 1775 and 1776 governing payment of prevailing wages and that the contract is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

D. ***Employed Apprentices:*** When working for the District, vendors and their subcontractors who employ or otherwise engage workers in any craft or trade apprentices, and who refer apprentices to the District for enrollment, are subject to the provisions of the California Apprenticeship Law, California Plan in Apprenticeship, and the Equal Employment Opportunity Action Plan adopted by the Board of Trustees.

E. ***Discriminatory Trusts and Restraints of Trade:*** Vendors are required to abide by California Business and Professions Code Sections 16721 and 16721.5 pertaining to unlawful discrimination in commercial transactions and unlawful restraints of trade.

VI. ***Competitive Bidding or Selection for Professional or Special Services (Non-Public Works projects):***

A. Bids or quotations must be obtained as follows:

1. Purchase of Goods or Services less than \$15,000 requires at least one written quote
2. Purchase of Goods or Services from \$15,000 to \$95,200 requires at least three (3) written quotations.
3. Purchase of Goods and Services in an amount that exceeds the annual Bid Threshold (\$95,200 in 2020) shall require formal advertised bids.
4. Professional Services or Special Services are exempt to formal bidding as per public

contract code 20111 (C) and do not legally require a formal bid process no matter the dollar amount. If the District has completed Request(s) for Qualifications (RFQ), then purchase of Professional Services from \$50,000 or more requires at least three (3) written quotations from qualified consultants, If the District has not completed a RFQ, then purchase of Professional Services requires a formal Request for Proposals

- i. Purchase of Special Services from \$50,000 or more requires at least three (3) quotations.

5. The above subsections 3 and 4 do not apply to purchases made using Piggyback contracts because there is no statutory bid threshold. Contracts that require competitive bidding must be approved by the Board of Trustees prior to award. Contracts for Professional Services or Special Services from \$50,000 or more must be approved by the Board of Trustees prior to award. Piggyback contracts shall be procured in compliance with the applicable statute, including, if necessary, a resolution from the Board of Trustees.

B. ***Bid Splitting:*** Public Contract Code Section 20657 prohibits splitting or separating projects into smaller work orders, contract, or purchase for the purpose of avoiding competitive bidding. A project may, however, be split into several trade-oriented contracts, which will each be competitively bid, if the District is using a multiple prime contractor project delivery method.

C. ***Bid and Contract Forms:*** The Vice Chancellor, Finance and Administration shall ensure that bid and contract forms are prepared for the District. Bid documents are prepared by the Purchasing Director in consultation with the individual initiating the request and shall and provide a basis for selection of a vendor. Bid documents are made available to vendors through the Purchasing Department.

D. ***Bid Specifications:***

Bid documents or requests for proposals contain specifications and/or drawings, if appropriate, which shall include a definite, complete statement of what is required and insofar as practical, shall include pertinent details of size, composition, construction, and/or texture of what is specified, and minimum standards of efficiency, durability and/or utility required of what is specified. In general, specifications should be generic in nature and not specify a particular brand, manufacturer or vendor. Vendors must provide equipment and appliances that earn the ENERGY STAR and meet ENERGY STAR specifications for energy efficiency where ratings exist. The Vice Chancellor, Finance and Administration shall ensure that bid specifications are sufficiently broad to encourage and promote open competitive bidding.

E. **Advertised Notice Calling for Formal Bids or Requests for Proposals:
When required by Education Code section 81641.**

The Vice Chancellor of Finance and Administration shall ensure that the District shall publish at least once a week for two weeks in a newspaper of general circulation published within the District or if there is no such paper, then in some newspaper of

general circulation, circulated in the county, (and may post on the District's web site or through an electronic portal) a notice calling for bids or proposals stating the work to be done or materials or supplies to be furnished and the time and place when bids will be opened.

F. **Bid Security:** When bids shall be accompanied by a certified or cashier's check, or bid bond, in the amount specified in the bid form, as security that the bidder will enter into contract pursuant to the terms of the bid document. If unused, bid bonds/security are returned to respective bidders within 60 days after the award of contract.

G. **Distribution and Examination of Bid Documents:** For public contracts and maintenance contracts the Vice Chancellor of General Services:

1. Shall ensure "Bid forms" along with applicable sets of specifications and drawings are made available to prospective bidders. Any changes to the bid documents prior to the award of bid must be provided to all prospective bidders in writing prior to the bid opening.
2. Shall provide a convenient place for bidders, subcontractors, and material personnel to use to examine specifications and drawings.
3. May require a deposit for sets of plans and specifications and may refund the deposit when the documents are returned.
4. May schedule a bidder's conference and/or job site walk through to clarify specifications.

H. **Receipt of Bids**

1. A time and place of bid opening is stated in the bid documents and the bid advertisement. Bids are accepted in the Purchasing Department up to the exact time of the bid opening. Bids received before the opening are kept unopened until the designated time.
2. The Vice Chancellor, Finance and Administration shall receive the bids and ensure bids are opened and read aloud in public at the time and place specified in the bid, shall check the bids for regularity and compliance with legal requirements, and record them. Bids are a matter of public record and the results are available in the Purchasing Department after the bid opening.

I. **Awarding of Contracts:** The awarding of bids and contracts shall be subject to the following conditions:

1. Any and all bids and contract proposals may be rejected by the District. Such rejection shall be in writing.

2. Bid and contract awards shall be made to the lowest responsive and responsible bidder meeting the requirements. Bids are considered to be "responsive" if they meet the requirements of the bid documents. The Board has the right to waive any non-material irregularities.

J. Amendments:

Any change to specifications of terms and conditions of the bid after the opening will require a written change order or contract amendment. The Board of Trustees may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of: (a) the amount specified in Section 20651 or 20655, whichever is applicable to the original contract; or (b) ten percent (10%) of the original contract price.

K. Emergency Repair Contracts without Bid

If the Board of Trustees declares an emergency by unanimous vote and with the county superintendent of schools' approval, the Purchasing Department may (1) make a contract in writing or otherwise for the performance of labor and furnishing of materials or supplies for any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property without advertising for or inviting bids; or (2) authorize the use of day labor or force account.

L. **Prequalification of Bidders:** As allowed by California Public Contract Code Sections 20101 and 20651.5, prospective bidders for a contract construction services of a particular type and/or having an estimated cost to the District in excess of \$1,000,000.00, may be required by the District to furnish sufficient proof of public works experience and financial solvency and ability by submitting a standard form questionnaire and financial information.

1. Applicant responses to the District's standard questionnaire shall be evaluated based on the uniform rating system adopted by the Board of Trustees.
2. As provided by laws, the questionnaires and financial information are not public records and shall not be open to public inspection.
3. A determination that an applicant is prequalified does not guarantee that a contract will be awarded.
4. A determination that an applicant is prequalified will, unless otherwise cancelled, revoked, or limited by the District, remain valid for a period of twelve (12) months after the date that the applicant was prequalified.
5. Applicants wishing to dispute a prequalification determination are entitled, prior to the closing time for receipt of bids for the contract for which they have been

prequalified (or, in the case of prequalification for a classification of contracts, prior to the closing time for receipt of bids for the first contract bid by District within such classification) to an appeal as provided in the District's prequalification procedures.

VII. The Vice Chancellor of General Services, in cooperation with the designated District planning structures, and with the approval of the Chancellor, is authorized to perform the following activities in preparation for facilities capital improvement contracts:

A. **Facilities:** The Vice Chancellor, General Services shall be responsible for the planning and programming of new construction, alterations and repairs of existing plants, and leasing of facilities which require State approval. This responsibility includes the planning and programming of college-initiated new construction, additions to existing plants, and major alterations of buildings and grounds.

B. **Drawings and Specifications:** The Vice Chancellor, General Services is responsible for preparation of drawings and specifications for new buildings, leased facilities, additions, major alterations and improvements of buildings and grounds together with estimates of costs.

1. Preliminary Drawings (Design Development Drawings) shall cover all proposed facilities, together with construction cost estimates, and shall be submitted to the Board of Trustees for approval and authorization to proceed with the Working Drawings and Specifications.
2. Working Drawings (Construction Drawings) shall be prepared showing specifications and revised cost estimates, if any, will be submitted for approval to the Board of Governors of the California Community Colleges before letting any contract or contracts for construction services totaling \$150,000 or more and the State Department of General Services, Division of the State Architect as required by statute (Education Code Sections 81837 and 81130 et seq.).
3. Final Drawings and Specifications approved by the State Department of General Services, Division of the State Architect and the Board of Governors of the California Community Colleges, along with revised estimates, if any, shall then be submitted to the Board of Trustees for adoption.

C. **Performance of Work by District Personnel:** The Vice Chancellor of General Services is authorized to plan for the use of day labor or force account personnel to perform repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, improvements on the school grounds, new buildings, and maintenance may be performed by day labor, or by force account, whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed \$21,000 in accordance with Education Code Section 20655.

D. Record Retention:

The District will retain records sufficient to detail the history of procurement.

Reference:

Title 5 Section 55007
Education Code Sections 81641 et seq.
Public Contract Code Sections 20103.7, 20112, 20650 et seq., and 22000 et seq.
Labor Code sections 1770 et seq.
Government Code Section 53060
ACCJC Accreditation Standard III.D.16
2 Code of Federal Regulations Part 200.318

Approved by the Chancellor: February 22, 2013
Revised and approved by the Chancellor: January 3, 2014
Revised and approved by the Chancellor: August 7, 2014
Revised and approved by the Chancellor: August 13, 2015
Revised and approved by the Chancellor: January 31, 2017
Revised and approved by the Chancellor: December 12, 2017
Revised and approved by the Chancellor: March 7, 2019
Revised and approved by the Chancellor: December 6, 2019
Revised and approved by the Chancellor: January 5, 2021