

2021 BIDDING REQUIREMENTS—K-12 AND COMMUNITY COLLEGE DISTRICTS

NOT USING CUPCAA¹

CONSTRUCTION PROJECTS OR CONTRACTS BY \$ AMOUNT ²	REQUIREMENTS					ACQUISITION PROCESS REQUIRED TO BE FOLLOWED PRIOR TO CONTRACT AWARD ⁸
	Prev. Wage ³	Bid Security ⁴	Payment Bond ⁵	Performance Bond ⁶	Ins. Cert. ⁷	
Under \$1,000	N	N	N	N	Y	Force account, P.O., or negotiated contract; no bidding required
\$1,000 to \$14,999	Y	N	N	N	Y	Force account, P.O., or negotiated contract; no bidding required
\$15,000 to \$25,000	Y	Y	N	N	Y	Formal bidding
Over \$25,000	Y	Y	Y	N*	Y	Formal bidding
Emergencies	Y	N	Y	N*	Y	No bidding where proper board action taken ⁹
EQUIPMENT, MATERIALS, SUPPLIES, NON-PUBLIC WORKS REPAIRS (INC. MAINTENANCE), NON-CONST. SERVICES	Prev. Wage ¹⁰	Bid Security ¹¹	Payment Bond ¹²	Performance Bond ¹³	Ins. Cert. ¹⁴	ACQUISITION PROCESS REQUIRED TO BE FOLLOWED PRIOR TO CONTRACT AWARD ¹⁵
Up to \$96,700 (2021)	M*	M	N	N**	Y	P.O., RFP, or proposal, no bidding required
Over \$96,700	M*	M	N	N**	Y	Formal bidding or exemption
Emergencies	M*	N	N	N**	Y	No bidding where proper board action taken ¹⁶

Notes

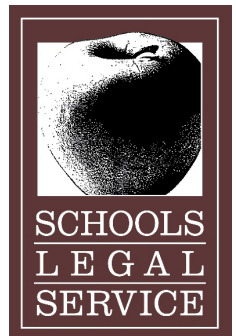
1. Public Contract Code (“PCC”) Section 22030 et seq. applies only to public agencies that choose to be bound by those rules. All other code sections apply to both K-12 and community college districts unless noted. Sections provided in parentheses apply to community colleges.

2. The PCC speaks in terms of “projects” but we are aware that multiple contracts are often awarded, as is common on the typical Construction Management (“CM”) project. For this reason, we believe the appropriate measure is the contract, whether or not it is part of a General Contractor or CM project. We refer to the size by “contract” which may be interpreted to mean either “contract” or “project” as the circumstances require.

3. Per Labor Code Section 1771, all public works contracts over \$1,000 require payment of prevailing wages, along with other requirements of the Labor Code.

4. Per PCC Section 20111(b)/(20651(b)), all construction contracts let after bidding require some form of bid security, either cash, cashier’s check, certified check, or a bid bond. The amount of security is left to the discretion of the district but is typically set at 10 percent of the bid amount.

5. Per Civil Code Section 9550, all public works contracts over \$25,000 require a payment bond. Failure to require a payment bond for such contracts may result in liability for negligence against the district. Exercising its discretion, a district may elect to require a bond for contracts with a lower contract value.



6. *A performance bond is not required by statute; however, a performance bond is strongly suggested for all projects/contracts having a payment bond.

7. Check the contract provisions on insurance to confirm the requirements.

8. An informal process may be used up to \$14,999. The district may adopt policies regulating the informal process. If circumstances permit, it is recommended that quotes be obtained from a sufficient number of vendors to obtain some competition for these informal contracts. The district need not use the lowest quote in all cases, but should be ready to describe why a quote other than the lowest was selected. PCC Section 20116 requires each district to annually publish a notice inviting contractors to register with the district to receive notice of future informal bidding projects in a newspaper of general circulation. The district must give notice to each registered contractor as informal projects are bid (an e-mail notice would be sufficient). For construction contracts of \$15,000 or more, the award must comply with the formal bidding rules, including advertising once a week for two weeks in a newspaper of general circulation, obtaining bid security, or complying with one of the bidding exceptions. REMINDER: "E-rate" acquisitions follow these rules **plus** any federal requirements. Some e-rate acquisitions qualify as public works construction.

9. Where a true emergency exists, the board may, by unanimous vote and with approval by the County Superintendent of Schools, award a contract or use force account to perform work required due to the emergency in order to continue existing classes or protect life or property.

10. Only public works contracts over \$1,000 require payment of prevailing wages. *Maintenance of public facilities requires prevailing wages, even though not within the definition of public project for bidding purposes. Non-public works services carry no such obligation, regardless of the amount. CAUTION: See Note 15 on "incidental" services.

11. Per PCC Section 20111(b)/20651(b), all such contracts shall be let to the lowest responsible bidder, who shall give security in the form required by the board in its discretion. No security is mandated for these contracts.

12. Exercising its discretion, a district may elect to require a payment bond for other types of contracts [...give security as the board may require - Section 20111(b)/20651(b)].

13. **A performance bond is never required by statute. Performance bonds may be required by the district in circumstances that warrant such security, as where a significant "up-front" or advance payment is required before equipment is delivered to its destination. Such circumstances are few and this question, including the contract provisions, should be discussed with district legal counsel.

14. Check the contract provisions on insurance to confirm what the contract requires. Vendors of services may be required to carry auto, liability, workers compensation, and/or errors and omissions insurance in appropriate circumstances. Consult with district legal counsel if in doubt.

15. An informal process may be used up to the \$96,700 threshold (a figure subject to annual adjustment). The district may have adopted policies regulating the informal process. If circumstances permit, it is recommended that quotes be obtained from a sufficient number of vendors to obtain some competition for these informal contracts. The district need not use the lowest quote in all cases, but should be ready to describe why a quote other than the lowest was selected. In many equipment acquisitions, some relatively small "installation" component is included. Services that are considered "incidental" to an equipment purchase (typically under 10 percent of the total price) are allowed. However, the larger the amount of the services, the greater the argument that the acquisition is really a public works project and the bonding and bidding requirements of public works contracts apply. Also, even where the services are under 10 percent, services requiring the use of tools, etc., are still subject to payment of prevailing wages, such that any installation services over \$1,000 should be paid at prevailing wage rates. Configuration, software installation, and similar services that often accompany equipment acquisitions are not subject to prevailing wages unless the entire contract is a public work. Contracts over \$96,700 (or the adjusted figure) must be let following formal bidding or through use of a recognized bidding exception.

16. Due to the high bid threshold and the presence of bidding exemptions for many equipment/materials acquisitions, the need for an emergency declaration is rare, but districts should follow the rules applicable to emergencies explained in Note 8 above, when needed.