

## 2023 BIDDING REQUIREMENTS—K-12 AND COMMUNITY COLLEGE DISTRICTS *USING CUPCCAA*<sup>1</sup>

| CONSTRUCTION PROJECTS<br>OR<br>CONTRACTS<br>BY \$ AMOUNT <sup>2</sup>   | REQUIREMENTS                |                               |                               |                                   |                            | ACQUISITION PROCESS REQUIRED<br>TO BE FOLLOWED PRIOR<br>TO CONTRACT AWARD <sup>8</sup>   |
|---|-----------------------------|-------------------------------|-------------------------------|-----------------------------------|----------------------------|--|
|   | Prev.<br>Wage <sup>3</sup>  | Bid<br>Security <sup>4</sup>  | Payment<br>Bond <sup>5</sup>  | Performance<br>Bond <sup>6</sup>  | Ins.<br>Cert. <sup>7</sup> |  |
| Under \$1,000   | N                           | N                             | N                             | N                                 | Y                          | Force account, P.O., or negotiated contract;<br>no bidding required                      |
| \$1,000 to \$25,000   | Y                           | N                             | N                             | N                                 | Y                          | Force account, P.O., or negotiated contract;<br>no bidding required                      |
| \$25,000 to \$60,000  | Y                           | N                             | Y                             | N*                                | Y                          | Force account, P.O., or negotiated contract;<br>no bidding required                      |
| \$60,000 to \$200,000   | Y                           | Y                             | Y                             | N*                                | Y                          | Informal bidding <sup>9</sup>  |
| \$200,000 to \$212,500  | Y                           | Y                             | Y                             | N*                                | Y                          | Informal bidding - circumstances for proper<br>use are restricted; requires board action |
| Over \$200,000  | Y                           | Y                             | Y                             | N*                                | Y                          | Formal CUPCCAA bidding <sup>10</sup>   |
| Emergencies   | Y                           | N                             | Y                             | N*                                | Y                          | Rules differ from non-CUPCCAA<br>emergencies <sup>11</sup>                               |
|   |                             |                               |                               |                                   |                            |  |
| EQUIPMENT, MATERIALS,<br>SUPPLIES, NON-PUBLIC<br>WORKS REPAIRS (INC.<br>MAINTENANCE), NON-<br>CONSTRUCTION SERVICES | Prev.<br>Wage <sup>12</sup> | Bid<br>Security <sup>13</sup> | Payment<br>Bond <sup>14</sup> | Performance<br>Bond <sup>15</sup> | Ins.<br>Cert.              | ACQUISITION PROCESS REQUIRED<br>TO BE FOLLOWED PRIOR<br>TO CONTRACT AWARD                |
| Less than \$109,300 (2023)  | M                           | N                             | N                             | N**                               | Y                          | P.O. or negotiated contract;<br>no bidding required <sup>16</sup>                        |
| Over \$109,300  | M                           | N                             | N                             | N**                               | Y                          | Formal bidding or exemption required   |
| Emergencies   | M                           | N                             | N                             | N**                               | Y                          | Same process as for non-CUPCCAA districts  |

### Notes

1. Public Contract Code (“PCC”) Section 22030 et seq., also known as the California Uniform Public Construction Cost Accounting Act (“CUPCCAA”), applies only to public works projects for 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. (Note: Thresholds adjusted periodically by State Controller’s Office.)

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. We believe new guidance from the CUPCCAA Commission says to use total project cost, not individual contracts, on a CM project. You should consult with legal counsel when considering a CM project.

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

4. Per PCC Section 20111(b)/(20651(b)), all construction bids 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. We believe this bid security requirement applies to a CUPCCAA district.



5. Per Civil Code Sections 9550 and 9554, all public works contracts over \$25,000 require a payment bond in the amount of 100 percent of the contract price. This includes contracts awarded using CUPCCAA rules, even where no formal or informal bidding is required. 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 at 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. A district that has adopted the CUPCCAA rules may let construction projects up to \$60,000 by either using its own forces, by purchase order, or by negotiated contract. While the code does not require even an informal process for those projects, a district's own acquisition policies can set up some requirements; for instance, obtaining a minimum of three quotes, using an RFP or the like. For projects up to \$200,000, a CUPCCAA district may use "informal" bidding. (See Note 9.) If all bids received are over \$200,000, a district can award (by a 4/5s vote) a contract to the low responsible bidder for a price up to \$212,500 if the board determines the pre-bid cost estimate was reasonable. For projects over \$200,000 (\$212,500 as permitted), the district must use a formal bidding process. (See Note 10.) REMINDER: "E-rate" acquisitions follow these rules plus any federal requirements. Some e-rate acquisitions qualify as public works construction.
9. Informal bidding is defined in each district's policy adopted pursuant to PCC Section 22034. The district must create lists of qualified contractors by category of work. For each project, the district must give notice to all listed contractors providing the type of services sought or give notice to specified trade journals, or both, with mailing being complete at least 10 calendar days before bids are due. We believe this requires the bid due date to be at least 15 calendar days after the date of mailing. When contractors have agreed to accept the notice via facsimile, the notice is deemed complete when sent to the number identified by the contractor.
10. The rules for formal bidding under CUPCCAA are slightly different from regular bidding. Notice must be published at least once in a newspaper of general circulation at least 14 calendar days before the bid due date and both mailed and sent electronically, using either facsimile or e-mail if available, to specified trade journals at least 15 calendar days before the bid due date. The district should award the contract to the lowest responsive and responsible bidder or else reject all bids.
11. The district's board must make a finding by at least a 4/5ths vote, based on substantial evidence set forth in the minutes, that an emergency exists, that the need cannot wait the time required for bidding and that the action taken is necessary to respond to the emergency. The authority to declare an emergency and enter into contracts may be delegated, and the person to whom authority is delegated shall report back to the board no more than seven days later (up to 14 if at a regularly scheduled meeting), justifying the nature of the emergency, the necessity of the action taken, and why the emergency would not permit delay, and shall continue to report at each following meeting (unless the board meets weekly, then every other meeting) and the board must determine by at least a 4/5s vote whether there is need to continue the emergency action.
12. Only public works contracts over \$1,000 or more require payment of prevailing wages. \*Maintenance of public facilities requires payment of prevailing wages, even though not within the definition of public projects for bidding purposes. Non-public works services carry no such obligation, regardless of the amount. CAUTION: See Note 16 on "incidental" services.
13. 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.
14. Exercising its discretion, a district may elect to require a payment bond for other types of contracts ["... give security as the board may require - Public Contract Code Section 20111(b)/20651(b)].
15. \*\*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. These circumstances are few and this question, including the contract provisions, should be discussed with district legal counsel.
16. An informal process may be used up to the \$109,300 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 foster 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 \$109,300 (or the adjusted figure) must be let following formal bidding or through use of a recognized bidding exception.