

FINANCE AND ADMINISTRATIVE SERVICES

AP 6340 BIDS AND CONTRACTS

References:

- Education Code Sections 81641 et seq. 88003.1
- Public Contract Code Sections 3400, 20103.7, 20110 et seq., 20650 et seq., 22000 et seq., 22030 et seq.
- Government Code Section 53060
- Labor Code 1720 and 1770 et seq.
- ACCJC Accreditation Standard III.D.16
- 2 Code of Federal Regulations Part 200.318

The Superintendent/President delegates authority to the Vice President for Finance & Administrative Services, or designee, to manage the District's processes for procuring bids and securing contracts.

General Contract Procedures

General contract procedures are applicable to all types of contracts and agreements including contracts for goods and non-professional services, professional services, and construction and public works projects.

Authority to Contract

The authority to sign and execute contracts on behalf of the district is vested in the Governing Board. This authority can only be delegated by Board action. The Board delegates authority to sign and execute contracts less than the formal bid limits set in Public Contract Code, to the named agents on the authorized signature list. The authority to contract includes amendments, extensions, addendums, and terminations.

Contracts and/or agreements signed by any individual other than those authorized to sign by the Board are not valid or binding on the District.

All contracts are between the Palomar Community College District and the contracting agency. (Individual college programs or departments may not directly enter into a contract or agreement.)

Contracts under the formal bid limits require approval by one of the authorized district officers, and do not require approval by the Board to be legally enforceable.

Board Approval

The following contracts require approval, or ratification, by the Governing Board to constitute an enforceable agreement:

- Any contract to procure goods or services (excluding construction and public works) which meets or exceeds the formal bid limits set annually by the Board of Governors. (The formal bid limit for the current year is published on the California Department of Education website.)
- Any contract for construction or public works project which is over the formal bid limit for public works projects
- All multi-year contracts, excluding maintenance, repair, clinical program contracts (Nursing, EME, AODS, Dental, etc.), and renewal of existing multi-year contracts
- Hiring/renewal or modification of any consultant/professional services/employee acting in administrative capacity
- All contracts involving instructional activities offerings
- Field trips and international travel
- Change orders/modifications to public works projects
- Grants, including awards, sub-award, MOU's
- Consortium Instructional Agreements
- Partnership agreements
- Real Property: acquisitions, rights of way, easements, and dedications

Board Ratification

- Clinical Program Contracts
- Facility Rental Agreements
- Independent Contractors
- Consultants (not acting in an administrative capacity)
- Multimedia production agreements
- Workshop agreements
- Honorariums
- Renewal of existing multi-year agreements
- All other routine contracts and agreements

Contract Review

All contracts are reviewed and processed by Contracts Office staff. All contracts are subject to the requirements of federal and state codes and regulations. Contracts may require additional legal review. Review procedures must be completed before any contract is executed by the Governing Board's authorized signatory.

Supporting Documentation

Contracts submitted for consideration should be accompanied by a completed and signed Contract Review Approval Form located on Palomar's Business Services webpage. Contracts for construction, transportation, services, or maintenance may require a certificate of liability insurance, certificate of Workers' Compensation coverage, W-9, permits, licenses, and/or bonding. A purchase requisition should not be submitted until all documentation and full execution has been completed.

Contract Format/Negotiations

The Contracts Office can provide assistance in developing a contract. Contracts must be prepared with great care to protect the District in its dealings. Some contracts require negotiations as to the terms and conditions of the contract between the District and the contracting agency. Many vendors use their own contract format that is always subject to review and/or modification by either party prior to execution.

Subsequent Changes to Contracts

Any change or alteration of a contract will be done in writing and the cost agreed upon between the District and the contractor or contracting agency must also be in writing. The District 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 the amount specified in Public Contract Code Section 22000-22045, 20651 or 20655, whichever is applicable to the original contract, or ten percent(10%) of the original contract price.

Duration of Continuing Contracts for Services and Supplies

Continuing contracts for work or services furnished to the District are not to exceed five years. Contracts for materials and supplies are not to exceed three years.

Limits

Bids or quotes shall be secured as may be necessary to obtain the lowest possible prices as follows:

- Purchase of goods or services, that are not construction services, up to the limit set out in the Public Contract Code will require documented quotes.
- Purchase of goods or services, that are not construction services, in excess of the limit set out in the Public Contract Code will require formal advertised bids.
- Repairs, including maintenance as defined in Public Contract Code, that are not public projects.
- Public Works construction contracts as defined in Public Contract Code: construction, reconstruction, erection, alternation, renovation, improvement, demolition, repair work, or painting or repainting, of or involving any publicly owned, leased or operated facility.

- California Uniform Public Construction Cost Accounting Act – Public works projects up to the limits as set by California State Controller’s Office.
- Public works projects in excess of the limit set by California State Controller’s Office and defined in Public Contract Code

In securing bids or quotations, the District will avoid acquisition of unnecessary or duplicative items. Contracts involving expenditures that require competitive bidding require approval by the Governing Board prior to award.

Current bid minimums for purchases of goods and services and public works projects can be found on the Palomar College Business and Contract Services department web page.

Bid Specifications

Bid specifications 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.

Notice Calling for Formal Advertised Bids

Pursuant to PCC Section 20112, 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. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The District only accepts bids that are submitted on paper. If the District adopts the ability to accept bids electronically, at that time, the District permit electronic submittal.

Bid and contract forms shall be prepared and maintained by Contract Services. All applicable statutory provisions and Board Policies shall be observed in preparation of the forms. Contract Services shall be responsible for ensuring that the bid specifications are sufficiently broad to encourage and promote open competitive bidding.

All bid notices for work to be done shall contain an affirmative statement requiring compliance with California Labor Code Sections 1775 and 1776 governing payment of prevailing wages and California Labor Code Section 1777.5 governing employment of apprentices. All bid submissions shall contain all documents necessary to assure compliance with these California Labor Code Sections. Failure to provide such documentation shall cause any such bid to be deemed incomplete.

When required or determined to be appropriate, bids shall be accompanied by a

certified or cashier's check or bid bond, in the amount specified in the bid form, as a guarantee that the bidder will enter into contract and furnish the required contract bonds. When no longer required for the protection of the District, any certified or cashier's check received shall be returned to the respective bidder.

Contract Services shall make available to the prospective bidders bid forms with sets of specifications and drawings and shall provide a convenient place where bidders, subcontractors, and materiel personnel may examine the specifications and drawings.

Contract Services shall provide an electronic copy of the plans and specifications and other contract documents to a contractor plan room service at no charge upon request from that contractor plan room.

When permitted, a deposit for sets of plans and specifications may be required and may be refunded when such documents are returned.

Awarding of Bids and Contracts

The awarding of bids and contracts shall be subject to the following conditions:

- Any and all bids and contract proposals may be rejected by the District.
- All bids shall be opened publicly and bidder shall be given the opportunity to make record of the bids received.

Solicitations using a Request for Proposal (RFP), Request for Qualifications (RFQ), and Request for Information (RFI) are based on best value and not solely on lowest priced proposal.

- When formal bidding is required, bid and contract award recommendations to the Governing Board shall show a tabulation of the bids received in reasonable detail.
- Bid and contract awards shall be made to the lowest responsive and responsible bidder substantially meeting the requirements of the specifications. The District reserves the right to make its selection of materials or services purchased based on its best judgment as to which bid substantially complies with the quality required by the specifications.
- For the purposes of bid evaluation and selection 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 procedures adopted by the governing board in accordance with this section.

- "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.
- Conflict of Interest. Board members and employees of the District are prohibited from participating in the bid evaluation and selection process if he or she has a relationship with or financial interest in any of the bidders. When a Bid Evaluation & Selection Committee is established, all members of the committee will be required to disclose any such relationship prior to participation in the bid evaluation and selection process.

Purchase without Advertising for Bids

The Vice President for Finance & Administrative Services or designee is authorized to make purchases from firms holding public agency contracts without calling for bids where it appears advantageous to do so.

The Vice President for Finance & Administrative Services or designee is authorized or designee may, without advertising for bids within the same county, purchase or lease from other public agencies materials or services by authorization of contract or purchase order.

The Vice President for Finance & Administrative Services or designee is authorized or designee may make purchases through the State of California Cooperative Purchasing Program operated by the Department of General Services, California Multiple Award Schedule (CMAS), Western States Contracting Alliance (WSCA) with California endorsement, Foundation for California Community Colleges (FCCC) and other approved purchasing cooperatives, for goods and services as listed in the approved agreements.

The Vice President for Finance & Administrative Services or designee is authorized or designee is authorized to make purchases with a value between \$5,000 and \$250,000 from a certified small business, microbusiness, or disabled veteran business enterprise.

Emergency Repair Contracts without Bid

When emergency repairs or alterations are necessary to continue existing classes or to avoid danger of life or property, the Vice President for Finance & Administrative Services is authorized may make a contract on behalf of the District for labor, materials, and supplies without advertising for or inviting bids, subject to authorization by the County Office of Education and by the Governing Board as per Public Contract Code 22050.

Unlawful to Split Bids

Pursuant to PCC Section 20657, it shall be unlawful to split or separate into smaller work orders, purchase orders, contracts, or projects any work, project, or service for the purpose of evading the provisions of the Public Contract Code requiring work to be done by contract after competitive bidding.

Employees as Independent Contractors

An individual cannot be both a District employee and an independent contractor with the District at the same time unless it can be clearly demonstrated that the work being performed as an independent contractor has no relationship to work being performed as an employee of the District and such work cannot be construed as falling within the broad definition of an individual’s job description or classification s an employee. Any District employee engaged as an independent contract is considered an “employee” for payroll purposes and payment for services is subject to appropriate tax withholding.

Record Retention

The District will retain records sufficient to detail the history of procurement. These records include rationale for the method of procurement, selection of contract type, contractor selection and rejection, and the basis for the contract price.

Office of Primary Responsibility: Finance and Administrative Service