

Understanding Bid and Contract Code Compliance For California's Community Colleges (July 2016)

Section 1: Baseline Bid Requirements

Under California's Public Contract Code, Community College Provisions (section 20650-20662), for formal bidding, districts should generally issue and publicly advertise a Request for Proposal (RFP) for any procurement equal to or over the applicable small purchase threshold (bid threshold: \$87,800 –adjusted annually by Chancellor's Office on January 1) per **California Public Contract Code 20651**. Preparing and issuing an RFP generally include (at minimum) the following steps:

1. Evaluating which types of services are needed and preparing a Scope of Work (SOW) that describes the services and tasks or products requested. Develop clear and implied metrics for evaluation.
2. Drafting the RFP, which should include the SOW and the college's sample contract.
3. Providing the RFP to contractors known to offer the desired services or products.
4. Publicly advertising the RFP – Published in a newspaper of general circulation twice, and seven days apart. (**California Education Code 81641**, and **Public Contract Code 20657**)
5. Establishing a date and time for opening proposals/bids.
6. Evaluating the proposals/bids.
7. If dictated by district's procurement policy, allow for protest. All protests must be entertained within this protest period.
8. Awarding the contract and publicly posting the outcome of the RFP.

In general, the bid process require districts to maintain records sufficient to detail the significant history of the procurement process – as required by the Brown Act. These records include, but are not limited to: public notice, RFP (or IFB – Invitation for Bid), contract, rationale for the method of procurement, selection of contract type, justification for lack of competition, basis for contractor selection or rejection, and basis for award cost or price.

Section 2: Piggyback

The governing board of a district may, without advertising for bids, if the board 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. It is important to note that the Public Contract Code does not authorize districts to "piggyback" on other public agency's service contracts. Generally compliant piggyback contract sources:

- **California Public Contract Code 20661 and California Education Code 72670.5** Foundation, and/or California Community Colleges Chancellor's Office agreements.
- **California Public Contract Code 20653**: California Multiple Award Schedules, also known as CMAS (i.e. a California Department of General Services agreement).
- **California Public Contract Code 20653.5 and California Education Code 81646**: CSU/UC Agreements (accessible through the Foundation) that fall under the California Higher Education Shared Services (CHESS) Initiative.
- **California Public Contract Code 20652**. Purchase through public corporations without advertising for bids. This code allows for the use of "piggyback" contracts from other public agencies. The code states that the payment may be made to the agency. For the most part, the purchase transaction and payment is handled directly with the vendor, making reference to the piggyback contract.

Piggybacking is a generally accepted concept by community college districts. It is important to note that if the anticipated spend is over the bid threshold (\$87,800), the contract must have undergone the requirements indicated in Section 1 for public agency bidding requirements (i.e. the agency from whom you wish to piggyback from underwent the competitive bidding process).



Section 3: Sole Source

There are instances wherein Statutory Exceptions for bidding and/or piggybacking are available in California Education, Government, and Public Contract Codes. To exercise these Statutory Exceptions certain criteria have to be met. Note that almost always it is necessary to obtain Board Approval when citing a Statutory Exception for sole source.

- **California Public Contract Code 20304. Sole Source.** Provides authority for the governing board of any community college district without observance of any provision requiring contracts, bids, or notice upon a vote of two-thirds of all its members, the procurement of material for the sole purpose of duplicating or replacing supply, equipment, or material items already in use, and there is only a single source of procurement, when the board has determined it to be in the best interest of the district.
- **California Public Contract Code 20651.2(a). DVBE Procurement.** Allows for up to \$250,000 in information technology and services – if purchased from a certified small business, including a microbusiness, or to a disabled veteran business enterprise (DVBE), if the community college district obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more disabled veteran business enterprises.
- **California Education 81651 and Public Contract Code 20118.3. Education Material.** If you are purchasing educational films, audiovisual material, test materials, instructional computer software packages. Exercising this is subject to Board approval.
- **California Education Code section 81645. IT Equipment and Software.** A community college district may contract “in accordance with procedures and criteria established by the governing board.” The procedures and criteria which a community college district will use to evaluate proposals and determine which of the three lowest proposers will be awarded a contract can be either general procedures applicable to all requests for proposals under Education Code section 81645, or can be specific procedures established for each request for proposal prior to publication of a notice calling for proposals. The established procedures and criteria should be included in the request for proposals along with a statement that pursuant to Education Code section 81645 the district may award to any one of the three lowest proposals meeting the district's requirements.

Section 4: Cautions

- It is unlawful to split bids into smaller contracts to avoid public competitive bidding requirements (**California Public Contract Code Section 20657**).
Situational Example:
 - Procuring commodities and services of \$258,000, then splitting purchase orders to be ‘under’ threshold is not allowable – this is referred to as “Split Bid” or “Split PO”, and is generally considered unlawful.
- **Labor Compliance Program** monitoring and enforcement may be required on **State bond funded projects**; especially projects that fall under prevailing wage provisions. If you’re spending state bond dollars, make sure you read through allowable and restricted activities or procurements.

Section 5: Procurement Resources

If the above sections require additional information, please feel free to reach out to me:

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You also have resources available at your district to assist you in this matter. **Speak with your Procurement Director** – they track allowable statutes, any Board exceptions/policies/procedures that may affect your procurement; and can even refer you to appropriate piggyback agreement options. **Reach out to your Legal Counsel** – this is especially important if you are running a bid, or citing Statutory Exceptions for a desired procurement in excess of the bid threshold.

Note: Contents of this document is for reference only, and does not constitute legal advice, or a legal position by the supplier. The information above was gathered through an analysis of various enabling statutes by California’s community colleges.

