

## 2021 BIDDING REQUIREMENTS NON-CONSTRUCTION CONTRACT K-12 AND COMMUNITY COLLEGE DISTRICTS

EQUIPMENT, MATERIALS, SUPPLIES, NON-PUBLIC WORKS REPAIRS (INC. MAINTENANCE), NON-CONST. SERVICES	Prev. Wage <sup>1</sup>	Bid Security <sup>2</sup>	Payment Bond <sup>3</sup>	Performance Bond <sup>4</sup>	Ins. Cert <sup>5</sup>	ACQUISITION PROCESS REQUIRED TO BE FOLLOWED PRIOR TO CONTRACT AWARD <sup>6</sup>
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 <sup>7</sup>
Emergencies	M	N	N	N	Y	No bidding where proper board action taken <sup>8</sup>

### Notes

1. 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. \*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 6 on “incidental” services.

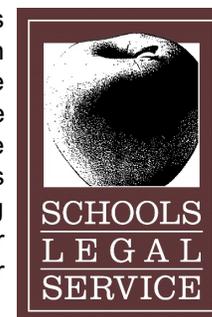
2. Per Public Contract Code (“PCC”) Section 20111(b)/20651(b), all such contracts shall be let to the lowest responsible bidder, who shall give security in the form required by the board in its discretion. No security is mandated for these contracts.

3. 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. 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)].

4. A performance bond is never required by statute; however, a performance bond is strongly suggested for all projects/contracts having a payment bond. 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.

5. 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.

6. 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.



7. Exemptions from bidding include contracts for: professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114 [per PCC Section 20111(d)]; emergencies [per PCC Section 1102]; standard school supplies and equipment [per PCC Section 38110, et seq.]; materials, equipment or supplies purchased through the Department of General Services or utilizing its California Multiple Award Schedule [per PCC Section 10290-10299]; via joint powers purchasing cooperatives [per Government Code("GC") Section 6502]; federal surplus property purchases [Education Code ("EC") Section 17602[81653]]; piggyback bids [per PCC Section 20118[20652]]; data processing equipment [per PCC Section 20118.1/ EC Section 81645]; technology, telecommunications, related equipment, software and services purchased through competitive negotiation [per PCC Sections 20118.2 and 10399]; certain transportation services [per EC Section 39802]; instructional materials [per PCC Section 20118.3/ EC Section 81651]; energy conservation and energy management [per GC Section 4217.10 et seq.]; insurance [per PCC Section 2011(d)/ GC Section 990/ EC Section 35208[72506] and 17565[81601]]; professional experts or other special services and advice [per GC Section 53060]; perishable foodstuffs and seasonal commodities [per PCC Section 20660/ EC Section 38083]; and when unique circumstances establish that compliance with the competitive bidding requirements would be "futile and unavailing" [*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645]. For a detailed discussion of each of the exemptions, please review our *School Business Manual*.

8. Per PCC Section 1102, "emergency" means "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. 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.