



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 13.2

**Meeting Date:** December 14, 2023

**Subject:** Contract Procedures Update

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: \_\_\_\_\_)
- Conference/Action
- Action
- Public Hearing

**Division:** Business Services

**Recommendation:** Receive an update on the Contract Procedures Audit.

**Background/Rationale:** The Board of Education approved the District to retain the services of Attorney at Law, Dannis Woliver Kelley to complete an audit of the District's contracting processes, controls, and systems, for compliance and best practices. The audit is complete and an update is provided.

**Financial Considerations:** None.

**LCAP Goal(s):** College, Career and Life Ready Graduates; Safe, Emotionally Healthy, Engaged Students; Family and Community Empowerment; Operational Excellence

**Documents Attached:**

1. Memo from Business Services to the Board of Education
2. Memo from DWK to the Chief Business and Operations Officer
3. Contract Procedures Manual
4. Procurement Matrix
5. Flow chart of internal process

**Estimated Time of Presentation:** N/A

**Submitted by:** Janea Marking, Chief Business and Officer

**Approved by:** Lisa Allen, Interim Superintendent



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**BUSINESS SERVICES**

5735 47th Avenue • Sacramento, CA 95824

*Janea Marking, Chief Business and Operations Officer*

To: Lisa Allen, Interim Superintendent  
SCUSD Board of Education

From: Janea Marking, Chief Business and Operations Officer

Date: December 8, 2023

Subject: Contract Procedures Update

The purpose of this memorandum is to provide an update regarding the Contract Procedures Audit conducted by Dannis Woliver Kelly (DWK), Attorneys at Law. DWK reviewed the district's purchasing procedures to ensure compliance and success using best practices and policy for the implementation of adequate controls. The process provided the following documents:

- Memo from DWK
- Contract Procedures Manual
- Procurement Matrix
- Templates for Board Agendas and Contractual Agreements
- Flow Chart of Internal Process

Next Steps:

The Purchasing Team appreciates the review and support. They have implemented procedures as recommended by DWK. As part of these efforts, Business Services is implementing a new procedure for transparency and approval of unauthorized contracts. An unauthorized contract is a vendor who provides services without an approved contract in place. Beginning in January, in the event that a contractor seeks payment without an approved contract, an item will appear on the Consent Agenda seeking Board approval for payment.

We found this process to be very helpful. In doing so, the district is better protected against risk exposure and our educational partners/vendors will have increased confidence in our systems. We are glad for the partnership and review by DWK.

Attachments



# CONFIDENTIAL MEMORANDUM

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## CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE

**TO:** Janea Marking  
Chief Business and Operations Officer  
Sacramento City Unified School District

**CC:** Jesse M. Castillo  
Robert Aldama  
Tina Alvarez-Bevens  
Karen Wilker

**FROM:** Deidree Y.M.K. Sakai  
Christine Vana

**DATE:** October 27, 2023

**RE:** Contract Procedures Audit  
Our file 6585.230001

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We were asked to audit the District's contracting procedures. To do so, we reviewed existing contracts, Board agenda items, Board policies and materials prepared by District staff. We also met with District staff to discuss the current procedures and best practices.

After looking at the broad range of areas and considering the alternatives, we thought that the best use of our time and efforts would be to look prospectively and set the District up for success going forward.

Accordingly, we have prepared a Contract Procedures Manual and updated a Procurement Matrix that can be used as a reference guide and/or training tool. The Manual provides the applicable statutes, including are procurement requirements therein, identifies the corresponding Board policies and integrates best practices (i.e. making sure that every contract is approved or ratified by the Board). We reviewed the Board agendas and provided agenda and resolution templates that can be used in prescribed situations. In addition, we have included form agreements to be used, including to purchase equipment, procuring services, incorporating piggyback contracts. Finally, we include a flow chart describing the District's internal process from the request for a contract to the award.



**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT**

**PROCUREMENT MANUAL  
FOR EQUIPMENT, MATERIALS, SUPPLIES, AND  
NON-CONSTRUCTION SERVICES**

**DEVELOPED SPECIFICALLY FOR SACRAMENTO CITY UNIFIED SCHOOL DISTRICT (2023)**

DWK 4096445v3

**PROCUREMENT MANUAL FOR  
EQUIPMENT, MATERIALS, SUPPLIES, AND NON-CONSTRUCTION SERVICES  
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TAB S: SCUSD Contracting Process Flowchart

# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

## PROCUREMENT MANUAL FOR EQUIPMENT, MATERIALS, SUPPLIES, AND NON-CONSTRUCTION SERVICES

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### I. SCOPE OF THIS MANUAL

#### A. What this Manual Covers

##### 1. Equipment, Materials, Supplies

For the purpose of procurement, "equipment, materials, or supplies to be furnished, sold, or leased to the district" are distinguished from "services." (Pub. Contract Code, § 20111(a)(1).)

##### 2. Services Except Construction Services

For the purpose of procurement, "services," including maintenance, are distinguished from "construction services." (Pub. Contract Code, § 20111(a).) Maintenance is defined as "routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility..." defined as a "plant, building, structure, ground facility, utility system, or real property." Maintenance includes "carpentry, electrical, plumbing, glazing, and other craftwork." (Pub. Contract Code, §§ 20111(a)(3), 20115.)

##### 3. Professional or Special Services

Professional services has been defined as "one that requires specialized knowledge, training, or skill, usually of a mental or intellectual nature," not necessarily requiring a specialized license or certification. (See generally, Pub. Contract Code, § 20111(d).) School districts often need to retain independent consultants to provide professional services related to public projects, such as for architecture, landscape architecture, engineering, environmental services, land surveying, and construction management. (Gov. Code, § 4525 et seq.) School districts also retain independent consultants to provide special services defined as financial, economic, accounting, legal, administrative, or insurance services. (Gov. Code, § 53060.)

#### B. What this Manual Does Not Cover

##### 1. Construction Services

"Public projects" are defined as "[c]onstruction, reconstruction, erection, alteration, renovation, improvement, demolition, [painting or repainting,] and repair work involving any publicly owned, leased, or operated facility." (Pub. Contract Code, § 22002(c)(1), (2).)

##### 2. Contracts Related to Real Property

School districts can enter a wide range of contracts involving or related to real property.

**[END OF SECTION]**

## II. ASSUMPTION: CONDUCT FORMAL BIDDING



### A. Formal Bidding is the Rule, Not the Exception

Start from the following assumption: Everything must be formally bid. There are exceptions, and some products and non-construction services do not need to be competitively bid. But the starting point should be a bidding requirement, and then look for an exception or exclusion that allows the District to procure the product or service without bidding. This is the best practice to ensure appropriate and legal procurement of any product and non-construction service.

### B. Bid Thresholds

#### 1. Threshold for Equipment, Materials, Supplies, and Non-Construction Services

Competitive bidding is required when the District is contracting for equipment, materials, supplies, or non-constructions in excess of the bid limit. (Pub. Contract Code, § 20111(a)(1).) In 2023, the bid limit is \$109,300 for equipment, materials, supplies, or non-construction services. This bid limit is revised in January of each year.

#### 2. No Bid Splitting

“It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.” (Pub. Contract Code, § 20116.)



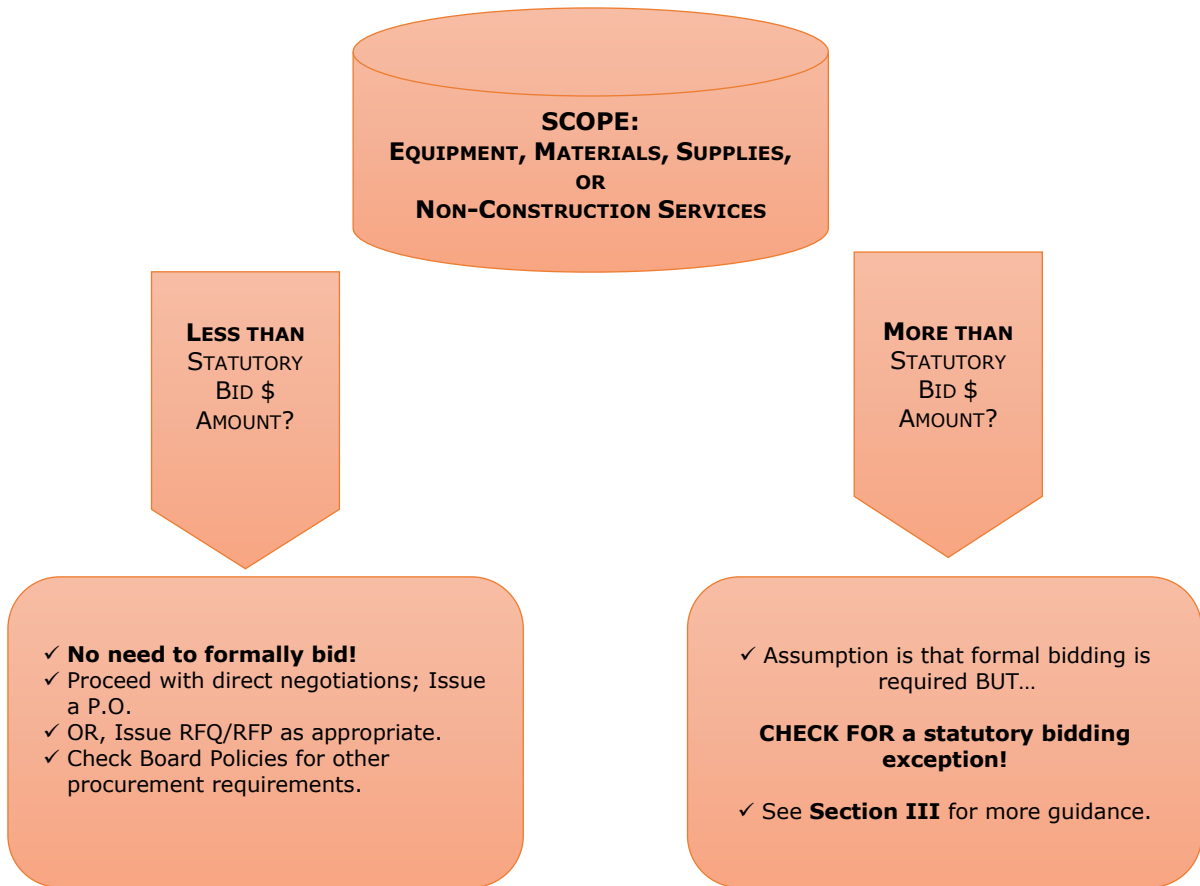
### C. Check the Statutes for Any Bidding Exceptions

Before proceeding with the detailed formal bidding process (Section II.D, below), perform a check to see if any bidding exception may apply to your project, allowing you to bypass the formal bidding process for those purchases over the statutory bid dollar threshold. The bidding exception **MUST BE** provided in statute, otherwise, your purchase must proceed with formal bidding.

See next sheet for checklist...



# QUICK GUIDE PROCUREMENT CHECKLIST



## D. Formal Bidding Process

Formal public bidding requires compliance with statutory and common law requirements. The District must advertise for bids, provide bid documents to potential bidders, and award the contract to the lowest responsive, responsible bidder.

### 1. Advertise for Formal Bids

#### a. Statutory Requirements

- i. Published at least once a week for (2) two weeks. (Pub. Contract Code, § 20112.)
- ii. Description of work to be done or materials or supplies to be furnished. (Pub. Contract Code, § 20112.)
- iii. Time and place of bid opening. (Pub. Contract Code, § 20112.)

- iv. For maintenance contracts (Lab. Code, § 1771):
  - (a) Required contractor's license to perform the work. (Pub. Contract Code, § 3300(a).)
  - (b) Prevailing wage requirements for public work projects of more than \$1,000. (Labor Code, § 1773.2.)
  - (c) Labor Compliance Program, if any (Labor Code, § 1771.5), or state labor compliance, if applicable (Labor Code, § 1771.4).
  - (d) DIR public works contractor registration required for all tiers of contractors for public works projects. (Lab. Code, § 1771.1.)
  - (e) For projects over \$15,000, contractors must submit electronic certified payroll reports directly to DIR. (Lab. Code, § 1776.)
- v. Watch for sole sourcing and "or equal" specification requirements. (Pub. Contract Code, § 3400(b).)

## **2. Provide Full Set of the Bid Documents**

The District must provide all potential bidders with a full set of bid documents, including the contract documents describing the services and/or items the District is seeking. These should include:

### **a. Instructions to Bidders**

Describes rules which apply to bids and bid opening, such as: bid security; bid evaluation; bid withdrawal; addenda; alternates; bonds; rejection of non-conforming bids; evidence of financial responsibility; price and quantity breakdown on unit price bids; applicable laws; contractor licensing requirements; bid protest deadline and procedure; and District's right to reject all bids.

### **b. Documents Due with Bid Proposal Form**

The District must provide all potential bidders the documents that the bidder must turn in with its bid. The District then evaluates these documents for responsiveness and responsibility and determines which bidder submitted the lowest bid. Examples of required documents:

- i. **Bid Proposal Form**
- ii. **Bid Security** (Pub. Contract Code, §§ 20111(a)(2), 20111(b)(4))
- iii. **Non-Collusion Declaration** (Pub. Contract Code, § 7106.)
- iv. **Iran Contracting Act Certification**, for contracts or renewals of goods and services for \$1,000,000 or more. (Pub. Contract Code, § 2204.)

A bidder cannot be allowed to change its bid once the bids have been opened – not to fill in blanks, not to "fix" errors, and not to submit a missing document.

**c. Bid Proposal Form**

- i. Bid price and price for alternates.
- ii. Signature of authorized representative of bidder.
- iii. List of subcontractors performing work in excess of one-half of one percent (0.5%) of work of contract if maintenance contract over \$15,000.
- iv. Acknowledgement of any addenda.

**d. Bid Bond on the District's Form or other Security**

- i. Bid bond equal to ten percent (10%) of the contract price is required by Public Contract Code section 20111(b)(4) for public works projects. Must have notarial acknowledgement, power of attorney, and certificate of authority of signer.
- ii. Other acceptable forms of security are cash, a cashier's check payable to the District, or a certified check payable to the District.
- iii. District must verify surety is an admitted surety. Section 995.311 of the Code of Civil Procedure requires that "any bond required on a public works contract . . . shall be executed by an admitted surety insurer," and that the District can verify this by either "[p]rinting out information from the website of the Department of Insurance" or "[o]btaining a certificate from the county clerk."
- iv. A bid security may be required at the Board's discretion for non-construction contracts per Public Contract Code section 20111(a)(2).

**e. Documents Generally Due after Award**

The District must provide the potential bidders some of the documents that the successful bidder must turn in after award of the contract by the Board. The District should not let any successful bidder perform any work or supply any items until it has submitted all applicable documents.

**i. Executed Contract Agreement.**

Binds the bidder to perform for the price, sets the time of performance, identifies the liquidated damages, incorporates the contract documents, reaffirms Labor Code requirements, and stipulates to the substitution of securities, among others.

**ii. Insurance Certificates and Endorsements.**

It is important that the District receive the required endorsements as well as the certificates. These ensure that the amounts, limits, identity of additional insureds, and notification requirements are part of the insurance policy. The District's risk manager can provide information related to required limits and scopes of coverage for each project.

**iii. Worker's Compensation Certification, as required.**

- iv. **Fingerprinting/Criminal Background Investigation Certification**, as may be required for the project.
- v. **Prevailing Wage Certification**, as required.

## **E. Evaluating Bids**

### **1. The Lowest Responsive, Responsible Bidder**

The District must award the contract to the bidder that submits the lowest responsive monetary bid and who is responsible or may reject all bids instead.

- a. The notice to bidders must specify the method of determining the lowest bidder. Options are as follows (Pub. Contract Code, §§ 20103.8(a)-(d)):
  - i. Lowest base bid price only. (Default if no method is specified.)
  - ii. Lowest price using the base bid and specified alternates.
  - iii. Lowest price using the base bid and alternates needed in a specified order to reach a publicly disclosed dollar amount.
  - iv. Lowest price determined in a way that would prevent the District from knowing the identity of bidders, including proposed subcontractors and supplies, until bidders have been ranked.

### **2. Determining a "Responsible Bidder"**

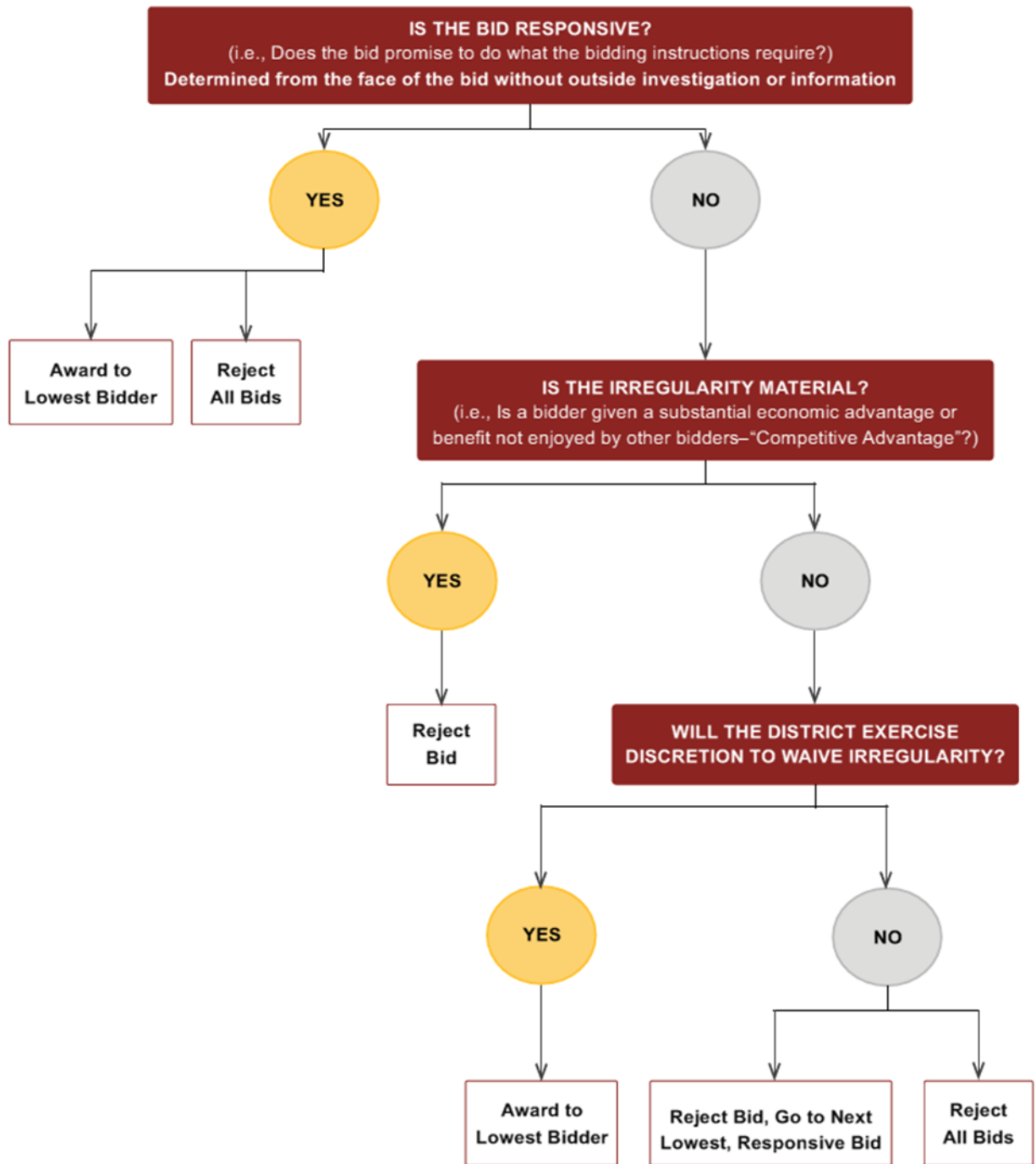
- a. Determining if a bidder is "responsible" involves judgments as to whether the bidder has "demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform" the work of the contract. (Pub. Contract Code, § 1103.) It "is a complex matter dependent, often, on information received outside the bidding process requiring, in many cases, the application of subtle judgment." (*Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341-42.)
- b. Before finding a bidder non-responsible, the District must provide the rejected bidder due process. Before rejecting a bid based on whether the bidder is responsible, the public body must (1) notify that bidder of any evidence reflecting upon the bidder's responsibility received from others or adduced as a result of independent investigation, (2) afford the bidder an opportunity to rebut such adverse evidence, and (3) permit the bidder to present evidence of qualification. (See *City of Inglewood-L.A. County Civic Center Authority v. Super. Ct.* (1972) 7 Cal.3d 861, 871.)
- c. A bid investigation that goes outside the four corners of the bid is frequently an issue of non-responsibility rather than non-responsiveness. A determination of non-responsibility would entitle the contractor to due process. Factors to consider when determining whether a bidder is non-responsible or its bid is non-responsive are:
  - i. The complexity of the problem and the ensuing need for subtle administrative judgment.

- ii. The need for information received outside the bidding process.
- iii. Whether the problem is the sort that is susceptible to categorical hard and fast lines, or whether it is better handled on a “case-by-case” basis.
- iv. The potential for adverse impact on the professional or business reputation of the bidder.
- v. The potential that “innocent bidders” are subject to arbitrary or erroneous disqualification from public works contracting. (See *Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1456-57, citing *D. H. Williams Construction, Inc., v. Clovis Unified School Dist.* (2007) 146 Cal.App.4th 757, 766.)

### **3. Responsiveness of a Bid**

- a. This can be determined from the face of the bid. Examples include failure to provide licensing information, dollar amounts, or other information plainly called for by the bid documents.
- b. The District need not provide a contractor due process prior to making a finding that the bid is non-responsive.
- c. These matters can sometimes be waived if the omission or “irregularity” is not significant. For example, a bidder who neglects to sign the bid may still be awarded the contract if the signature appears in other places on the bid. The determination as to whether an error in a bid can be waived is governed by two sometimes inconsistent tests:
  - i. A defect in a bid cannot be waived if the defect would have given the bidder the right to withdraw its bid without forfeiting its bid bond due to its mistake. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1443.)
  - ii. A defect in a bid cannot be waived if the defect affects the amount of the bid by giving the bidder an advantage not enjoyed by other bidders. (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 905-907.)
  - iii. Waiver of a minor defect in a bid is up to the District’s discretion. (*MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 374.) The District should be consistent in the exercise of this discretion.
- d. A public agency may not declare a bid nonresponsive merely because the bidder listed an unlicensed subcontractor. A subcontractor is not required to be licensed at the time it submits its sub-bid, but it must be licensed when it signs its subcontract with the prime contractor. If the subcontractor is not properly licensed by the time it must perform its work, the contractor has the right to substitute the subcontractor. (Pub. Contract Code, § 4107(a).) Therefore, the contractor’s bid may not be found nonresponsive based on a subcontractor’s lack of a license. (*D.H. Williams Construction, Inc. v. Clovis Unified School Dist.* (2007) 146 Cal.App.4th 757.)

# Bid Responsiveness Flow Chart



#### 4. Bid Protests

When a bidder believes that the District has made an incorrect determination as to the "lowest responsive, responsible bidder," it may file a bid protest.

**a. Bid protests should be investigated before award of the contract.**

- i. The Instructions to Bidders should limit the time for filing protests or who can file a protest (i.e. someone who can be awarded the contract – "standing").
- ii. The protest should be sent to the low bidder for a response, and that response should be provided to the protesting bidder for a counter-response.

**b. Superintendent or designee shall review the documents submitted and render a decision in writing. Protesting bidder may appeal Superintendent's or designee's decision to the Board when the contract is awarded.**

**c. If the bid protest is rejected, then the protesting bidder may file a writ of mandamus with the court to challenge award.**

- i. Even if they prevail at court, a protesting bidder's damages are limited to:
  - (a) Bid preparation expenses.
  - (b) Bid protest expenses.
  - (c) Unabsorbed overhead.
  - (d) Prejudgment interest.
  - (e) A protesting bidder cannot recover alleged lost profits. (*Kajima/Ray Wilson v. L.A. County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 315-321.)
- ii. If the contract is later determined to be invalid due to a defect or defects in the competitive bidding process caused solely by the District, pursuant to Public Contract Code section 5110, the contractor who entered into the contract with the District shall be entitled to be paid the reasonable cost, specifically excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination that the contract is invalid if all of the following conditions are met:
  - (a) Contractor proceeded with construction based upon a good faith belief that contract was valid.
  - (b) District has reasonably determined that the work performed is satisfactory.
  - (c) Contractor fraud did not occur in the obtaining or performance of the contract.

## **F. Bid Withdrawals**

A bidder may withdraw its bid due to mistake if it notifies the District in writing within five (5) business days of the bid opening of its mistake and provides detail as to how the mistake occurred. (Pub. Contract Code, § 5103(b).)

**1. The District may relieve the bidder of its bid if the District finds and documents the following:**

- a.** A mistake was made in filling out the bid and not due to error in judgment or carelessness inspecting the site or reading the plans or specifications. This is sometimes characterized as a "clerical error." (Pub. Contract Code, § 5103(d).)
- b.** The mistake made the bid materially different from what the bidder intended. (Pub. Contract Code, § 5103(c).)

**2. The bidder claiming a mistake or who forfeits their bid security is prohibited from bidding again on the same project. (Pub. Contract Code, § 5105.)**

**3. If bidder does not agree to execute the contract after award within the time provided by the bid documents, the bidder may forfeit its bid security (i.e. bid bond).**

- a.** A district cannot recover on a bid bond after it knowingly misleads the contractor. In *Emma Corporation v. Inglewood Unified School Dist.* (2004) 114 Cal.App.4th 1018, a district knowingly misrepresented to a contractor that the information and notification in the contractor's withdrawal was sufficient. The district awarded the project to the contractor, and when the contractor refused to perform, the district sued to recover on the bid bond. The court held that the district deliberately misled the contractor so the district could not recover on the contractor's bid bond.
- b.** In addition to collecting the bid security, the District may award the contract to the next lowest bidder without re-bidding.

See next sheet for **Reference Guide for Procurement Categories** to quickly identify the type of contract you seek, and the specific formal bidding requirements for that category in accordance with statutory parameters.

**[CONTINUES ON NEXT PAGE...]**



TYPE OF CONTRACT	STATUTE	NOTES	FORM
<b>FORMAL PUBLIC BIDDING</b>			
<ul style="list-style-type: none"> <li>• <b>Non-Construction Services <u>Over the Bid Limit, Including Maintenance</u></b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20111(a)</li> </ul>	<ul style="list-style-type: none"> <li>• "The governing board of any school district . . . , shall let any contracts involving an expenditure of more than [the bid limit*] for . . . [s]ervices, except construction services," and repairs, including maintenance defined as "routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility," defined as a "plant, building, structure, ground facility, utility system, or real property." (Pub. Contract Code, § 20111(a).)</li> <li>• Maintenance includes "carpentry, electrical, plumbing, glazing, and other craftwork." (Pub. Contract Code, § 20115).</li> <li>• "The contract shall be let to the lowest responsible bidder who shall give security as the board requires" or reject all bids. (Pub. Contract Code, § 20111(a).)</li> </ul>	Front End Bid Documents
<ul style="list-style-type: none"> <li>• <b>Equipment, Materials and Supplies <u>Over the Bid Limit</u></b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20111(a)</li> </ul>	<ul style="list-style-type: none"> <li>• "The governing board of any school district . . . , shall let any contracts involving an expenditure of more than [the bid limit*] for . . . [t]he purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district." (Pub. Contract Code, § 20111(a).)</li> <li>• "The contract shall be let to the lowest responsible bidder who shall give security as the board requires" or reject all bids. (Pub. Contract Code, § 20111(a).)</li> </ul>	Front End Bid Documents
<b>1 of 3 LOWEST BIDDERS AFTER FORMAL PUBLIC BIDDING</b>			
<ul style="list-style-type: none"> <li>• <b>Electronic Data-Processing Systems and Supporting Software</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20118.1</li> </ul>	<ul style="list-style-type: none"> <li>• "The governing board of any school district may contract with an acceptable party who is one of the three lowest responsible bidders for the procurement or maintenance, or both, of electronic data-processing systems and supporting software in any manner the board deems appropriate." (Pub. Contract Code, § 20118.1.)</li> <li>[NOTE: <i>The District may also use an RFP/competitive negotiation to procure "technology" contracts using Pub. Contract Code, § 20118.2. See below.</i>]</li> </ul>	Front End Bid Documents
<b>MOST QUALIFIED RESPONSIVE BIDS</b>			
<ul style="list-style-type: none"> <li>• <b>Job Order Contracts for Maintenance</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, §§ 20919.20 - 20919.33</li> </ul>	<ul style="list-style-type: none"> <li>• "'Job order contract' means a contract, awarded to a most qualified bidder as described in paragraph (1) of subdivision (b) of Section 20919.24, between the school district and a licensed, bonded, and general liability insured contractor in which the contractor agrees to a fixed period, fixed-unit price, and indefinite quantity contract that provides for the use of job orders for public works or maintenance projects." (Pub. Contract Code, § 20919.21.)</li> </ul>	Consult with Legal Counsel

**FORMAL BIDDING REQUIRED**

**[END OF PROCUREMENT REFERENCE GUIDE FOR FORMAL BIDDING]**

### **III. KEY EXCEPTIONS TO FORMAL BIDDING**

#### **A. Evaluating Your Procurement Options to Bypass Formal Bidding**

- 1.** If you are over the statutory bid dollar threshold but desire a more streamlined procurement process or require selection of the vendor using more flexible criteria than just the lowest price, see next sheet for the **Reference Guide for Procurement Categories** for a Table Summary of various contract types and their corresponding legal authority and recommended form of agreement
- 2.** Search for the contract type/category you desire and proceed with the procurement process set forth in that statute.
- 3.** If the statute details the procurement procedure, timeline, and evaluation criteria, then you **MUST FOLLOW** those requirements to be legally compliant with the bidding exception procurement process.

**[CONTINUES ON NEXT PAGE...]**

	TYPE OF CONTRACT	STATUTE	NOTES	FORM
	<b>DIRECTLY NEGOTIATE A CONTRACT</b>			
<b>NO BIDDING REQUIRED</b>	• <b>Special Services: Financial, Economic, Accounting, Legal or Administrative Services</b>	• Gov. Code, § 53060	• School districts may contract without bidding for, "special services and advice in financial, economic, accounting, . . . legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required." (Gov. Code, § 53060.)	Independent Consultant Agreement for Services
	• <b>Insurance Services</b>	• Pub. Contract Code, § 20111(d)	• The District may contract without bidding for professional services or advice, insurance services, or any other purchase or service otherwise exempt. (Pub. Contract Code, § 20111(d).)	Independent Consultant Agreement for Services
	• <b>Waste Services</b>	• Pub. Resources Code, § 40059(a)(2)	• School districts may procure its own solid waste handling services and the district can decide, "[w]hether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding." (Pub. Resources Code, § 40059(a)(2).)	Independent Consultant Agreement for Services
	• <b>Non-Construction Services up to the Bid Limit</b>	• Pub. Contract Code, § 20111(a)	• School districts must only publicly bid contracts that exceed a specific dollar amount. Contracts under those bid limits need not be bid, but the District must follow Board policies and administrative regulations.	Independent Consultant Agreement for Services
	• <b>Equipment, Materials, or Supplies up to the Bid Limit</b>	• Pub. Contract Code, § 20111(a)	• School districts must only publicly bid contracts that exceed a specific dollar amount. Contracts under those bid limits need not be bid, but the District must follow Board policies and administrative regulations.	Purchase Agreement for Equipment, Materials, and Supplies
	• <b>Educational Materials</b>	• Pub. Contract Code, § 20118.3	• School districts may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals without taking estimates or advertising for bids. (Pub. Contract Code, § 20118.3.)	Purchase Agreement for Equipment, Materials, and Supplies
	• <b>Energy Conservation, Cogeneration and Alternate Energy Supply Sources</b>	• Gov. Code, § 4217.10 et seq.	<p>• "Prior to awarding or entering into an [energy service contract], the public agency <u>may</u> request proposals from qualified persons. After evaluating the proposals, the public agency <u>may</u> award the contract on the basis of the experience of the contractor, the type of technology employed by the contractor, the cost to the local agency, and any other relevant considerations." (Gov. Code, § 4217.16, emphases added.)</p> <p>• The District need not formally or informally bid an energy service contract, although it may. The District's Board must make specific findings prior to approving an energy efficiency contract.</p>	Consult with Legal Counsel

**[CONTINUES ON NEXT PAGE...]**

TYPE OF CONTRACT	STATUTE	NOTES	FORM	
<b>BIDDING BY ANOTHER PUBLIC ENTITY</b>				
<b>NO BIDDING REQUIRED</b>	<ul style="list-style-type: none"> <li>• <b>Piggyback Contracts for Equipment, Materials, Supplies, Vehicles, Personal Property (Cannot Piggyback for Services)</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20118</li> </ul>	<ul style="list-style-type: none"> <li>• “[T]he governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, <u>to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property</u> for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor. . . .” (Pub. Contract Code, § 20118, emphases added.)</li> <li>• The District cannot piggyback for <u>services</u>.</li> <li>• <i>Caution: legal issues with modular construction on permanent foundation affecting funding—check with legal counsel.</i></li> </ul>	Consult with Legal Counsel
	<ul style="list-style-type: none"> <li>• <b>Goods, Information Technology, and Services Pursuant to a California Multiple Award Schedule (CMAS) Contract</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, §§ 10298 &amp; 10299</li> </ul>	<ul style="list-style-type: none"> <li>• “The [DGS] may make the services of the department available, upon the terms and conditions agreed to, to any . . . district empowered to expend public funds for the acquisition of goods, information technology, or services for assisting the agency in acquisitions conducted pursuant to [this section].” (Pub. Contract Code, § 10298(b).)</li> <li>• Section 10299 has similar provisions specifically for school districts’ “acquisition of information technology, goods, and services.”</li> <li>• <i>Caution: as of January 1, 2023, school districts’ use of CMAS for carpet, resilient flooring, synthetic turf, lighting fixtures limited to under the formal bid threshold and not new construction and requires use of skilled and trained workforce. (Pub. Contract Code, § 10298.5.)</i></li> </ul>	Consult with Legal Counsel
	<ul style="list-style-type: none"> <li>• <b>Joint Exercise of Powers Act</b></li> </ul>	<ul style="list-style-type: none"> <li>• Gov. Code, § 500 et seq.</li> </ul>	<ul style="list-style-type: none"> <li>• Public agencies, including cities, counties, school districts, the federal government, and public agencies outside of the State, may enter into joint powers agreements to exercise powers common to them, including the power to procure equipment, materials, and supplies (Gov. Code, § 6500 et seq.)</li> </ul>	Consult with Legal Counsel

**[CONTINUES ON NEXT PAGE...]**

NO BIDDING REQUIRED	TYPE OF CONTRACT	STATUTE	NOTES	FORM
	<b>"RFP" and/or "RFQ" PROCESS</b>			
	<ul style="list-style-type: none"> <li>• <b>Computers, Software, Telecommunications Equipment, Microwave Equipment, and Other Related Electronic Equipment and Apparatus</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20118.2</li> </ul>	<ul style="list-style-type: none"> <li>• After making a finding that it is in the best interest of the District, it may procure these items through an RFP process and should consider, in addition to price, the following in the award of those contracts: vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, competing products and materials available, fitness of purchase, manufacturer's warranties, and other similar factors. (Pub. Contract Code, § 20118.2.)</li> </ul>	RFP and Agreement
	<ul style="list-style-type: none"> <li>• <b>Perishables/Food and Food Services Contracts</b></li> </ul>	<ul style="list-style-type: none"> <li>• Pub. Contract Code, § 20111(c)</li> </ul>	<ul style="list-style-type: none"> <li>• "Procurement bid solicitations and awards made by a school district approved to operate at least one federal nonprofit child nutrition program for purchases in support of those programs shall be consistent with the federal procurement standards in Sections 200.318 to 200.326, inclusive, of Part 200 of Title 2 of the Code of Federal Regulations. These awards shall be let to the most responsive and responsible party. The price shall be the primary consideration, but not the only determining factor." (Pub. Contract Code, § 20111(c).)</li> </ul>	RFP and Agreement
	<ul style="list-style-type: none"> <li>• <b>Food Service Management Company Contracts</b></li> </ul>	<ul style="list-style-type: none"> <li>• 7 CFR, sections 210.19[a][5] and 220.16[c][1]</li> </ul>	<ul style="list-style-type: none"> <li>• The California Department of Education ("CDE") has determined that to comply with federal regulations (7 C.F.R. §§ 210.16, 210.21, and 3016, et seq.), school districts may use the RFP process to award the contract to the lowest bidder who best meets the District's needs and stated objective.</li> <li>• The District must submit all bid documents to the CDE PRU for approval prior to issuance (7 CFR, sections 210.19[a][5] and 220.16[c][1]).</li> </ul>	RFP and Agreement

**[END OF PROCUREMENT REFERENCE GUIDE FOR FORMAL BIDDING EXCEPTIONS]**

## B. Statutory Exceptions for Equipment, Materials, and Supplies

### 1. Equipment, Materials, or Supplies Below the Bid Limit.

The District must still comply with Board policies regarding procurement under the current bid limit. Board Policy 3310 requires the Superintendent or designee to maintain effective purchasing procedures in order to ensure that maximum value is received for money spent by the District. Equipment, materials, or supplies shall meet the needs of the person or department ordering them at the lowest price consistent with standard purchasing practices.

Accordingly, the District has required that all purchases below the bid threshold must be supported by the procedures contained in the table below, depending on the purchase amount.

Purchase Amount	Procedure
\$0 - \$7,499	Provide price source (e.g., phone, fax, email, vendor quote)
\$7,500 - \$19,999	Provide two (2) price quotes (e.g., phone, fax, email, vendor quote) and attach to requisition.
\$20,000 - \$109,300	Provide three (3) written quotes and attach to requisition.

### 2. Educational Materials

"Any school district may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals . . . without taking estimates or advertising for bids." (Pub. Contract Code, § 20118.3.)

### 3. Technology Equipment

#### a. Electronic Data Processing Systems and Supporting Software



Formal bidding is required for these contracts, but the District may contract with one of the three lowest responsive bids from responsible bidders and then may enter into a contract "in any manner the board deems appropriate," if the Notice to Bidders informs bidders that the District is using this process. (Pub. Contract Code, § 20118.1.)

#### b. Computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus

Section 20118.2 of the Public Contract Code authorizes school districts to procure technology-related contracts over the bid threshold using a competitive negotiation process instead of formal bidding. After making the initial finding that the District's desired contract qualifies within the parameters of the statute, the District may procure these items through a competitive negotiation process (typically an RFP) and should consider, in

addition to price, the following in the award of those contracts: vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, competing products and materials available, fitness of purchase, manufacturer's warranties, and other similar factors. (Pub. Contract Code, § 20118.2.) The statute requires specific findings if the District only receives one response to its RFP or if the District decides to award the contract to a vendor whose proposal was not the lowest price. Always confirm the requirements of this statute at each step because this statute is detailed in how these types of technology contracts must be procured and awarded.

Note that this bidding exception does not apply to contracts for construction services or for the procurement of any product that is available in substantial quantities to the general public.

This procurement method is permitted for procurement of both equipment and non-construction services over the bid limit. Specifically, technology-related equipment, software, material, and supplies, and for technology-related consulting, maintenance, and non-construction installation services. If the installation requires a contractor's license or otherwise clearly includes a public works component, then this statutory bidding exception SHALL NOT be used for that portion. The District will need to segregate the scope of work which may proceed under Section 20118.2, and the scope of work which must proceed under the appropriate public works procurement methodology (i.e., informal bidding or bidding).

#### 4. "Piggybacking" for Personal Property

"[T]he governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor. . . ." (Pub. Contract Code, § 20118, emphases added.) This procurement approach is typically referred to as "piggybacking," since the District is able to make use the bid of another agency.

The District may not piggyback for services.



NOTE: *The Office of Public School Construction issued a notice that any contracts for modular construction on a permanent foundation signed after January 25, 2006, must be competitively bid. School Facility Program funding for projects with piggyback contracts signed after January 25, 2006, will be jeopardized. Modular construction refers to a facility comprised of multiple pre-manufactured building components, such as separate wall and floor systems, that are transported to a site where all components are installed on a permanent foundation. This does not apply to portable or relocatable classrooms, which typically are factory-built as two complete building modules that are connected on-site and placed on a temporary foundation. Check with legal counsel to ensure compliance or purchase using funds other than from the School Facility Program.*

If the District is utilizing a piggyback contract, the District should ensure the following:

- i. that the item being acquired is the same item indicated in the original bid;
- ii. that the same terms and conditions apply as set forth in the original bid;
- iii. that the original bid is still valid; and
- iv. that the original bid includes a provision allowing piggybacking.

The District should obtain a complete set of the original bid documents and a copy of the resolution approving the original contract, as well as any term extensions, if applicable.

If the piggyback bid is for relocatable buildings, the original bid documents probably require the vendor to post performance and payment bonds and to obtain insurance. The District should obtain bonds listing the district as beneficiary and an insurance policy endorsement naming the District as an additional insured.

The District and vendor should either execute a copy of the agreement included in the original bid documents or include language on a purchase order that incorporates the original bid documents.

If the item will be lease financed, all these documents must be forwarded to legal counsel so that legal counsel can review them prior to giving an opinion of counsel. See section, below, regarding lease financing.

## **5. Multiple Award Contracts / State-Based Contracts**

### **a. California Multiple Award Schedule (“CMAS”) for goods, information technology, and services.**

The Department of General Services (“DGS”) has made certain “multiple award” contracts available to other public agencies, including school districts, for the acquisition of goods, information technology, or services. DGS competitively bid these contracts and has made them available to school districts through Public Contract Code sections 10298, 10299, and 12109. CMAS contracts must adhere to the most up-to-date specific form of CMAS contract with the vendor of the product or service. The District should obtain a copy of the complete CMAS contract, enter into its own contract with the vendor, and independently verify that the price is competitive. The District may negotiate a lower price than the CMAS price. Further information is available on the CMAS website. (<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Find-a-CMAS-Contractor>)

*NOTE: As of January 1, 2023, school districts’ use of CMAS for carpet, resilient flooring, synthetic turf, lighting fixtures limited to under the formal bid threshold and not new construction and requires use of skilled and trained workforce. (Pub. Contract Code, § 10298.5.)*





## **b. CALNET**

CALNET is a State program for the procurement of telecommunication and network services and equipment available to school districts through Government Code sections 11534 through 11543. They are presented by the Office of Technology Services Statewide Telecommunications and Network Division (STND) of the State Department of Technology. CALNET expired on December 3, 2008, and the State transitioned to CALNET 2 with contracts with AT&T and Verizon Business. CALNET 2 transitioned to CALNET 3 with contracts with AT&T, CenturyLink, Integra, Jive, NWN, and Verizon. CALNET 3 transitioned to CALNET NextGen-Transition Services with contracts with AireSpring, Aspen, AT&T, Carter, Comcast, Crown Castle, ENA, Granite, InterVision, Lumen (CenturyLink/Level 3), NTT, NWN, Red River, Verizon, Astound (Wave), and Zayo. (<https://cdt.ca.gov/services/calnet-services/>)

## **6. Joint Powers Authority (“JPA”) Contracts**

JPA contracts are authorized under California’s Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.). Two or more public agencies by agreement may jointly exercise any common power. (Gov. Code, § 6502.) This allows public agencies to share resources and combine services, which can create efficiencies and cost savings. The key limitation is that “the powers that may be exercised by a joint powers agency can be no greater than the powers shared by each of the agency’s constituent members.” (*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 962.)

Notably, “public agency” in this context is broadly defined to include, without limitation, federal and any state agencies and departments, counties, cities, public corporations, districts, and so on. (Gov. Code, § 6500.) This means the District is not limited geographically or by type of government entity in searching for JPA contracts for cooperative purchasing opportunities.

### **a. Essential conditions for using JPA contracts for purchasing include:**

- i. The District must join the JPA before it can utilize the JPA contract. NOTE: This requires Board action to approve joining the JPA.
- ii. The JPA contract procured by the other public agency must satisfy all legal requirements applicable to that public agency. NOTE: This may need an out-of-state legal opinion.
- iii. The District’s purchase of goods and services must be in accordance with and allowed under the JPA contract. NOTE: This involves close review of the JPA contract terms and pricing.

### **b. Commonly known JPAs include:**

- i. OMNIA Partners (U.S. Communities and National IPA)
- ii. NASPO ValuePoint Cooperative Purchasing Organization (formerly, Western States Contracting Alliance-NASPO)
- iii. Sourcewell (formerly, National Joint Powers Alliance (NJPA))

## 7. "Sole Source" Contract

The purchase of an item or service that is exempt from competitive bidding because it is available from only one source. Generally, public entities in California may only use a "sole source" approach for items or services on public projects in limited circumstances.

- a. In non-public works contracts, Districts may "sole source," with some risk:
  - i. There is a risk in listing only one product even in a non-public works contract. Although there is no specific statute that requires the District to allow bidders to offer an "equal" item, a potential bidder could argue that doing so violates the spirit of public bidding by not allowing all manufacturers to have their equal products be part of a publicly bid contract.
  - ii. At a minimum, any sole source bid should be based on Board-approved District standards.

Procurement of equipment, materials, or supplies below the bid threshold may be made by purchase order including standard terms. Otherwise, a proposed form of agreement is provided at **TAB A: Form of Purchase Agreement for Equipment, Materials, or Supplies**. This form can be tailored to meet the specific needs of the District for that vendor or project.

### C. For Non-Construction Services

#### 1. Services Below the Bid Limit.

In **2023**, the bid limit is \$109,300 for non-construction services. (Pub. Contract Code, § 20111(a).) This threshold will be adjusted and released by the School Fiscal Services Division of the California Department of Education.

Board Policy 3310 requires the Superintendent or designee to maintain effective purchasing procedures in order to ensure that maximum value is received for money spent by the District. Services shall meet the needs of the person or department ordering them at the lowest price consistent with standard purchasing practices.

Accordingly, the District requires that procurement of services below the bid threshold must be supported by the procedures contained in the table below, depending on the purchase amount.

Purchase Amount	Procedure
\$0 - \$7,499	Provide price source (e.g., phone, fax, email, vendor quote)
\$7,500 - \$19,999	Provide two (2) price quotes (e.g., phone, fax, email, vendor quote) and attach to requisition.
\$20,000 - \$109,300	Provide three (3) written quotes and attach to requisition.

Procurement of services below \$25,000.00 may be procured by purchase order. Services above \$25,000 must be procured by written contract. See **TAB B: Form Independent Consultant Agreement for Services**, for a proposed form of agreement which can be tailored for certain services. However, see **TAB C: Form of Independent Contractor Agreement for Maintenance Services**, for those repair and maintenance service-type contracts which meet the statutory parameters as provided in the document. Confirm the appropriate legal authority and form of contract with the Director of Procurement or counsel.

We have also prepared **TAB D: Form of Independent Contractor Agreement for On-Site Services (Short-Term Visitors Only)**. This agreement may be used for vendors providing one-day, on-site services, such as a "Mad Science" assembly for students. This agreement assumes that such vendors will always be supervised by District staff when they are with students. For larger scopes of services from vendors, we recommend using one of the other sample agreements with more protections for the District.

## 2. Special Services

School districts may contract without bidding for "special services and advice in financial, economic, accounting, . . . legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required." (Gov. Code, § 53060, emphasis added.) Also, Public Contract Code section 20111(d) exempts from the public bidding requirement "professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section." (Emphasis added.)

- a. The test for whether services are special services depends on three factors:
  - i. "*The nature of the services*" – are the services within or similar to the categories listed in Gov. Code § 53060?
    - o Yes – move to factor 2.
    - o No – may not qualify as a special service.
  - ii. "*The necessary qualifications required of a person furnishing the services*" – do the services require professional, experienced, and/or specially trained personnel?
    - o Yes – move to factor 3.
    - o No – may not qualify as a special service.
  - iii. "*The availability of the service from public sources*" – is the service unavailable to the District from its own employees, the State, County, or other public source?
    - o Yes – may qualify as a special service.
    - o No – may not qualify as a special service.

- b. Ultimately, this requires a fact-specific and case-by-case analysis. Always consider the above factors in light of the specific service need at the particular time.

There are only a couple of examples determined by a court to qualify as a special service which may be used as a guideline for your evaluation:

- School district could contract with firm for diversity and anti-bias training tailored to the specific district community. (See *Fair Education Santa Barbara v. Santa Barbara Unified School Dist.* (2021) 72 Cal.App.5th 884.)
  - Community college district could contract with Barnes & Noble to operate campus bookstores as a special service. (See *Service Employees Internat. Union v. Board of Trustees* (1996) 47 Cal.App.4th 1661, 1673).
  - School district could contract with private firm for research and development work as a special service. (See *California Sch. Employees Assn. v. Sunnyvale Elementary Sch. Dist.* (1973) 36 Cal.App.3d 46, 60.)
- c. The District has elected to subject special services to the bid threshold. This is supported by Board Policy 3311 which states formal bids may be required whenever it appears to be in the best interest of the District. See table above in paragraph 1 of Section III.C. for the District's requirements for procuring special services less than the bid threshold.

Once you have determined that the service is a special service, see **TAB B: Form Independent Consultant Agreement for Services**, for a proposed form of agreement which can be tailored for certain services. Confirm the appropriate legal authority and form of contract with the Director of Procurement or counsel.



### 3. Energy Efficiency/Energy Services Contracts

For energy services contracts, District may negotiate directly with contractor without formal bidding or may use RFP process under specified provisions of the Government Code. (Gov. Code, § 4217.10 et seq.)

The District may award contract on basis of contractor's experience, type of technology employed by contractor, cost to district and any other relevant considerations. (Gov. Code, § 4217.16.) The statute requires a public hearing prior to Board approval of a contract. Further, at least two weeks prior to public hearing at a regularly scheduled board meeting, post notice re consideration of energy services contract and related facilities ground lease, if any. (Gov. Code, §§ 4217.12 and/or 4217.13)

There are three general types of contract structures which may be used to implement the District's energy efficiency/energy services contracts. Work with the Director of Procurement, counsel, and the appropriate construction department staff to ensure the appropriate approach for the project.

- Energy Service Contract: A contract whereby an entity will provide energy or conservation services to district from energy conservation facility.
  - District may use for construction services without bidding.
  - District may use design-build project delivery method without dollar threshold or RFQ/RFP.
  - District may own energy conservation facility or purchase energy from 3rd party owner of energy conservation facility (i.e., Power Purchase Agreement).
- Facility Ground Lease: A lease from district to an entity in conjunction with an energy service contract and/or a facility financing contract.
  - May include easements, rights-of-way, licenses, and rights of access for construction, use, or ownership by entity
- Facility Financing Contract: A contract whereby an entity provides financing for energy conservation facility in exchange for repayment of financing/costs.
  - May provide for installment sale purchase, another form of purchase, or amortized lease of energy conservation facility.



#### **4. Waste / Recycling Services Contract**

The District may contract with a "solid waste enterprise" for waste handling services pursuant to the California Integrated Waste Management Act of 1989. (Pub. Resources Code, § 40050, et seq., the "Act".) Section 40193 of the Act defines a solid waste enterprise as an entity "which is regularly engaged in the business of providing solid waste handling services." Section 40059(a)(2) of the Act states that the District can determine "[w]hether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding."

**[END OF SECTION]**

## **IV. PROCURING CONSTRUCTION-RELATED PROFESSIONAL AND SPECIAL SERVICES**

### **A. Professional Services**

#### **1. Types of Professional Services**

Professional services are defined as architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. (Gov. Code, § 4525 et seq.)

#### **2. Selection Process Required**

- a.** Basis of Selection: Per the Government Code and Administrative Regulation 7140, professional services must be selected based on demonstrated competence and professional qualifications necessary for satisfactory performance at fair and reasonable prices to public agencies. The District may also consider references, interview performance, depth of experience on similar projects, price, demonstrated success with project/task management, demonstrated success with problem-solving, office location and staffing, or any number of other considerations to determine who will provide the best value to the District.
- b.** Procurement Method: Competitive bidding does not apply to professional services. (Pub. Contract Code, § 20111(d).) The Government Code does not mandate a specific method of procurement. Utilizing a Request for Qualifications ("RFQ"), Request for Proposals ("RFP"), or combined Request for Qualifications and Proposals ("RFQ/P") each satisfy the procurement requirement for professional services.
  - i. State agencies are required to conduct discussions with at least three firms; however, as a local agency, no minimum applies to the District.
  - ii. If using state bond funds, Education Code section 17070.50 requires services of any architect, structural engineer, or other design professional to be obtained pursuant to a competitive process (i.e., at a minimum, RFQ establishing a pool of consultants).
  - iii. Per Board Policy 7140, the Superintendent or designee shall ensure that: (a) practice which might result in unlawful activity such as rebates, kickbacks, or other unlawful consideration are prohibited, and (b) District employees are prohibited from participating in the selection process when they have a relationship with a person or business entity seeking a contract which would subject the employee to the prohibition of Government Code section 87100.
  - iv. Disclose in RFQ/P how firm(s) will be selected:
    - (a) "Best value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district
      - 1) Criteria only
      - 2) Weighed Score and/or Pass/Fail

- (b) Attach copy of proposed contract, including insurance requirements and indemnity provisions. Ask to confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District's standard agreement.
  - 1) Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, deleting, or adding. Respondents must set forth a clear explanation of what modification would be sought and specific alternate language.
  - 2) If selected, Respondent will be precluded from negotiating changes that have not been identified in its Proposal.
  - 3) The District will review, but is not obligated to accept, any proposed changes.
  
- v. Overview of Process:
  - (a) Notice of RFQ/P
    - 1) Advertising (optional)
  - (b) Statement of Qualifications
  - (c) Proposal
    - 1) May perform investigations of proposing parties that extend beyond contacting the references identified in the proposals.
  - (d) Interview
    - 1) May prepare standard set of questions so it will be easier to compare/evaluate answers.
  - (e) Evaluation/Selection of Firm
    - 1) Section Committee (optional)
  - (f) Appeal process
    - 1) Respondents do not have a right to appeal. Therefore, including a process would be voluntary. The down side of volunteering is dealing with disgruntled respondents and possible delay to awarding the contract; however, if you include an appeal process in the RFP, then the District controls the procedure, i.e., when are appeals submitted, who reviews appeal, etc.
  - (g) Contract Negotiation

(h) Award of Contract/Board Approval

- vi. California Public Records Act Requests: Once the contract is awarded, responses to RFQs and RFPs are not privileged like prequalification for construction services. Before the contract is awarded, proposals are exempt from CPRA requests during the negotiation process, based on public interest balancing test. (*Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.)

## **B. Special Services**

### **1. Types of Services Covered**

Special services are defined as financial, economic, accounting, legal, administrative, or insurance services. (Gov. Code, § 53060.)

### **2. No Competitive Selection Process Required**

- a. Basis of Selection: Per the Government Code, special services must be selected based on special training, experience, and competence to provide the services required. The District can contract for a service that is not otherwise available to the District from public sources. The District may, but is not required, to consider price as well as other factors in order to select the *specially trained, experienced and competent* consultant that will provide the best value to the District.
- b. Procurement Method: Per the Government Code, the District can directly negotiate special services contracts.

The District may choose to utilize an RFQ, RFP, or RFQ/P to procure special services, although competitive selection is not required. Can use best value for evaluation criteria.

- i. See IV.A.2.b.v., above, for Overview of Process

## **V. ENTERING INTO CONTRACT**



### **A. Contracting Process**

Provided at **TAB X** is a **Contracting Process Flowchart** that outlines steps to contracting, including the necessary approvals, beginning with a District site's need through approval by the Board. The Contracting Process Flowchart is updated annually on January 1.

### **B. Important Restrictions on Contracting**

#### **1. Authority to Enter into Contracts**

The only entity with the authority to bind a California school district contractually is Sacramento City Unified School District's ("District") Board of Education ("Board"). (Ed. Code, § 35010 ["Every school district shall be under the control of a board of school trustees or a board of education."].) This "control" includes the power to "carry on any . . . activity . . . which is not in conflict with or inconsistent with . . . any law and which is not in conflict with



the purposes for which school districts are established.” (Ed. Code, § 35160.) Entering into a contract is an activity that the District’s Board may perform.

**a. The Board Approval Process**

- i. The Board must approve or ratify all contracts.
- ii. Agenda items and backup must be submitted by the District’s scheduled deadline. The backup includes the contract unless the Assistant Superintendent Business Services approves an alternative.
- iii. If findings are needed, a form of resolution must be provided to the Board. Noncontroversial items can be on the consent calendar. Purchases below the bid threshold are approved by the Board on consent.

**b. Delegable Authority**

The Board’s authority to contract may, “by a majority vote of the board be delegated to its district superintendent, or to any persons that he or she may designate . . . . The delegation of power may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct.” (Ed. Code, § 17604.)

However, notwithstanding any such delegation, approval or ratification by the board is still required:

“[N]o contract made pursuant to the delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, the approval or ratification to be evidenced by a motion of the board duly passed and adopted.” (Ed. Code, § 17604, emphases added.)

Pursuant to Board Policy 3312, the District’s Board annually delegates contracting authority to the Superintendent, and other identified designees, by resolution, without limitation as to money or subject matter, provided that all such contracts are approved or ratified by the Board.

As of December 15, 2022, the Superintendent, Chief Business and Operations Officer, Chief Human Resources Officer, Deputy Superintendent, Assistant Superintendent of Business Services, and Manager II of Purchasing Services have been delegated this contracting authority.

**c. Delegable Authority for Purchase Under the Bid Limit**

If the authority that the Board delegates to District staff is under the bid limit of Public Contract Code section 20111, the Board need not approve or ratify the contract. Education Code section 17605 instead requires that, “All transactions entered into by the officer or employee shall be reviewed by the governing board every 60 days.” (Ed. Code, § 17605, emphasis added.)

Pursuant to Board Policy 3300, the District’s Board annually delegates purchasing authority to the Superintendent, and other identified designees, by resolution for the purchase of supplies, materials, apparatus, equipment,

and services, provided that no such individual purchase exceeds the annual bid threshold, and that purchases are reviewed by the Board every sixty (60) days. Purchases below the bid threshold are made by purchase order and are approved by the Board of Education on consent.

As of December 15, 2022, the Superintendent, Chief Business and Operations Officer, Chief Human Resources Officer, Deputy Superintendent, Assistant Superintendent of Business Services, and Manager II of Purchasing Services have been delegated this purchasing authority.

**d. Malfeasance**

Both sections 17604 and 17605 state that, in the event of malfeasance in these transactions, the officer or employee with the authority to contract shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance.

**2. Contract Duration**

**a. Equipment, Materials, Supplies**

Equipment contracts may not exceed five years; materials and supplies contracts may not exceed three years. (Ed. Code, § 17596.)

**b. Non-Construction Services**

Contracts for services may not exceed a term of five years. (Ed. Code, § 17596.)

**3. Special Issues for Services Contracts**

**a. "Contracting Out" Issues**

Although the Education Code generally allows the "contracting out" of work, collective bargaining obligations may affect the District's ability to contract out. For work performed by classified employees, contracting out to save money is only permissible if specific criteria set forth in Education Code section 45103.1 are met.

**b. Determination of Independent Contractor Status**

Prior to entering into any contract with an independent contractor, the District must make a determination that the work to be performed is not work that should be performed by a District employee.

**IRS Factors**

The IRS may penalize and fine the District if the District classifies an individual as an independent contractor when the individual is doing work that should be done by and as a District employee. The IRS makes this determination after a detailed analysis of factors related to the District's right to direct or control how the worker does the work, the District's right to direct or control the business part of the work, and how the District and the worker perceive their relationship.

See next sheet for **Independent Contractor Checklist** which includes guidelines and an evaluation checklist.

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## **INDEPENDENT CONTRACTOR CHECKLIST**

### Guidelines for the Hiring of Independent Contractors

The District must comply with Internal Revenue Service (IRS) regulations in its role as an employer. Failure to do so can result in assessment of additional taxes and penalties for the District. Therefore, it is important to determine whether someone is an employee or an independent contractor.

#### **I. What is an Independent Contractor?**

An independent contractor is not an employee and is not under the control of the District. In general, an independent contractor is an individual with a specific skill or technical knowledge hired by means of a written agreement to do a particular job for a designated period of time.

A District employee should not be employed as an independent contractor. The IRS scrutinizes the returns of individuals who receive both a W-2 Form and a 1099 Form in the same calendar year from one employer. If a District employee is hired to perform a service outside the scope of their normal duties, he/she must be paid through the payroll process.

#### **II. Determination of Employee vs. Independent Contractor Status**

The following guidelines can assist you in determining whether to pay an individual as an independent contractor or as an employee of the District.

##### Independent Contractor Checklist (attached)

Complete this checklist to help determine if an individual is eligible as an independent contractor or is to be paid as an employee. If further clarification is required, the EDD Employment Determination Guide is an excellent resource to help determine independent contractor status.

##### EDD Employment Determination Guide

The worksheet is provided by the Employment Development Department, State of California to help determine whether a worker is most likely an employee or an independent contractor. Generally speaking, whether a worker is an employee or an independent contractor depends on the application of factors contained in the California common law of employment and statutory provisions of the California Unemployment Insurance Code. The EDD Employment Determination Guide can be accessed at [https://edd.ca.gov/pdf\\_pub\\_ctr/de38.pdf](https://edd.ca.gov/pdf_pub_ctr/de38.pdf).

##### IRS Common Law Rules

The Internal Revenue Service has established the Common Law Rule to help determine the degree of control and the degree of independence in a worker/employer relationship. The penalties for misclassification under tax laws can be severe and, in some cases, may create liability for the District.

Generally, for tax purposes, the key question is the degree of control the employer can exercise over the worker. Further information on the IRS Common Law Rules can be found in IRS Publication 15A under forms and publications at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

[CONTINUES ON NEXT PAGE...]

**INDEPENDENT CONTRACTOR EVALUATION CHECKLIST**

Date: \_\_\_\_\_

Legal Entity Name of Contractor: \_\_\_\_\_

The purpose of this checklist is to assist in the determination of employee or independent contractor status per AB5. Federal and State law places the burden of proof on the employer to show that an independent contractor exists.

<b>Questions for ABC Test:</b> Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:	YES	NO
A. Is the worker free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of the work and in fact?	<input type="checkbox"/>	<input type="checkbox"/>
B. Is the worker performing work that is outside the usual course of the District's business?	<input type="checkbox"/>	<input type="checkbox"/>
C. Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?	<input type="checkbox"/>	<input type="checkbox"/>

<b>Borello Factors Test</b> (For occupations exempt from the ABC Test under Labor Code 2750.3):	YES	NO
1. Is the worker an employee of the District or has he/she been employed by the District within the past twelve (12) months?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the worker perform the same type of work that is generally performed by regular employees?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the District determine the means and methods by which the results are accomplished?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the District provide supplies, equipment, software, and/or tools necessary to perform the services?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the District provide training, supervision, or instruction other than conveying the scope of the service or resulted desired?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the District establish the worker's work schedule?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the worker required to perform services on the District property on a regular and continuing basis?	<input type="checkbox"/>	<input type="checkbox"/>
8. Can the worker be terminated by the District or quit work at any time without incurring liability?	<input type="checkbox"/>	<input type="checkbox"/>

Completed by: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

If one or more responses to the above questions are "YES," the worker may be considered an employee under IRS guidelines. Please provide support for independent contractor status on all "YES" answers for Borello Test:

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By signing below, I certify, to the best of my knowledge, that the information provided is correct and that the information contained in the Independent Contractor Agreement matches the approved Board item.

Requestor: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Once checklist has been completed submit it to the Assistant Superintendent, Business Services to create the Independent Contractor Agreement.

Please allow adequate time for Agreement to be executed by both parties. Suggested timeframe is 30 days. Please include time for Board to review and approval.

**[END OF INDEPENDENT CONTRACTOR CHECKLIST]**

### **c. Services May Not Be Leased**

The Education Code does not authorize the “lease” of services. The subject matter of a lease, by definition, must be tangible real or personal property, and services do not constitute property. Some leases may include some services (e.g. janitorial services in a commercial lease), but these types of services are not the focus of the lease and are limited, incidental services necessary to maintain the property. Some types of financing leases include incidental services as part of the lease (e.g., installation and delivery of copy machines). However, yearly maintenance contracts for copiers are not properly included in a lease.

## **C. Preparing and Using Contract Forms**

The District has a form of independent contractor agreement that the District requires all of its schools and departments to use when contracting with any consultant or other services vendor. Use of this form will avoid contracts that fail to contain the required terms.



### **1. Checklist**

- a.** Document Review - see section 2., below
- b.** Term of Contract – see contract
- c.** Approvals
- d.** Board Agenda Item

### **2. Important Contract Sections to Review**

The following items are important for every contract. Most need to be reviewed and added for each specific contract.

#### **a. Cover Sheet**

The Cover Sheet provides the reader approving the contract a summary of contract information. This Cover Sheet must be removed prior to execution by the parties.

#### **b. Legal Authority**

The contract needs to indicate whether it is for special services or non-construction services under the bid limit of \$109,300 in 2023. Other contracts, including public work contracts over sixty thousand (\$60,000) under the California Uniform Construction Cost Accounting Act require public bidding.

#### **c. Scope of Services**

Define the scope of the products or performance for which the parties are contracting. One sentence is rarely enough. A paragraph may be enough. Generally, the more detail, the better. Best Practice: Append the contractor’s proposal as EXHIBIT A to the contract, if possible.

**d. Term**

- i. Without a clear term of the contract (e.g., one year), a contract could be void or not enforceable. Alternatively, it could extend longer than the parties intend, or is legally permissible. A clearly defined contract term should be in all contracts.
- ii. Education Code section 17596 limits the term for contracts for services, apparatus and equipment to five years and for materials or supplies to three years. (Ed. Code, § 17596.)

**e. Document Submittal**

- i. Workers' Compensation Certification is required if the contractor has any employees, whether or not they will be working at the District or on the contract. It is not required if the contract is with an individual or partnership that has no employees.
- ii. Fingerprinting/Criminal Background Investigation Certification. (Ed. Code, § 45125.1.)
- iii. Insurance Certificates and Endorsements.
- iv. W-9 Form, if not already on file.

**f. Compensation/Payment**

Payment provisions are usually pretty straightforward, but they must be verified. Any arrangement other than installment payment after performance should be stated.

**g. Expenses**

Any expenses that District will pay, outside of the compensation, should be itemized; otherwise, note "Not Applicable."

**h. Independent Contractor**

This section clarifies that a contractor is not a District employee.

**i. Materials**

Any materials District will provide should be listed, i.e., use of laptop computer, projector, telephone, copier, paper, books, etc.; otherwise, note "Not Applicable."

**j. Performance of Work**

This section sets District standards for contractor performance and should be reviewed and revised if necessary, by the party initiating the contract.



**k. Originality of Services; Ownership of Data; and Copyright/Trademark/Patent**

Keep the Ownership of Data and Copyright/Trademark/Patent provisions, unless you have a good reason not to. Contractor request is not a sufficient reason to omit this section.

**l. Audit**

Provides contractor's requirement to retain books, records, and systems of account during the term of contract and for five years, and District's right to audit and examine such records.

**m. Termination**

Termination provisions should allow the District to terminate immediately for cause. Contractors may argue that they will not have time to cure a breach before termination. That is not true. The District can, at its discretion, give the other party time to cure a breach notwithstanding a termination provision; providing a mandatory cure period is not required.

District termination for convenience is useful for all contracts in case funding issues, changes in District priorities or contractor performance make termination advisable. District termination for non-appropriation of funds is required for financing leases. See section below regarding financing of lease purchase transactions.

**n. Indemnification**

Indemnification clauses can be complex and confusing. The District should not indemnify anyone else in many circumstances. A good indemnification clause will require the other party to indemnify the District for any damages arising out of, pertaining to, or related to the contractor's obligations under and performance of the contract, except those damages caused by the sole negligence or willful misconduct of the District.

**o. Insurance**

- i. The other party should carry, at a minimum, commercial general liability ("CGL"), any auto automobile liability ("Auto"), and workers' compensation insurance for its employees. The contract should state, and the District's risk manager or insurance adviser should confirm, the types and levels of coverage. The District should require an endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under CGL and Auto policies.
- ii. The insurance provisions should require that the policies will not be cancelled or revised on less than 30-day's written notice to the District.
- iii. If the other party is providing professional services, it should also carry a professional liability policy.
- iv. The District may require a waiver of subrogation and a certain rating for the insurers. Employer's liability insurance is also advisable.

**p. Contractor Information**

- i. Insert Contractor's current contact information for notice purposes.
- ii. Make sure Contractor fills out contractor information after its signature.

**q. Attorneys' Fees**

There are two types of provisions: (1) where each party is responsible for their own attorneys' fees and costs and (2) where the prevailing party's legal expenses are paid by the losing party of a lawsuit, claim or other litigation. The first type of arrangement may dissuade the parties from initiating any legal action or encourage settlement. The second type of arrangement may dissuade a party from violating the contract.

**3. When You May Use a Purchase Order Without A Contract**

- a. When it does not require any terms not on the purchase order.
- b. When it is a small, risk-free contract.
- c. When it is for multiple orders under an existing contract.
- d. When the Assistant Superintendent, Business Services approves the purchase order without a separate contract.
- e. Best Practice: Use purchase order form with standard terms approved by District. When in Doubt, ask the Assistant Superintendent, Business Services.

**[END OF SECTION]**

## VI. ADDITIONAL REQUIREMENTS FOR SPECIFIC CONTRACTS

### A. Contracts Related to Food and Kitchens



#### 1. Perishables/Food and Food Services Contracts

- a. "Perishable foodstuffs and seasonal commodities needed in the operation of cafeterias may be purchased . . . in accordance with rules and regulations for such purchase adopted by the governing board of [a school district] notwithstanding any provisions of [the Education Code] in conflict with such rules and regulations." (Ed. Code, § 38083.)
- b. For districts that participate in the National School Lunch Program and/or the Commodity Supplemental Food Program, federal regulations generally provide that school districts may use their own procurement procedures that reflect applicable state and local laws and regulations. (Tit. 7, Code of Federal Regulations ("C.F.R."), Part 210.)
- c. The Education Code now limits the inclusion of non-nutritious food and beverages in school meal and snack offerings. A school district may not, "[e]nter into ... a contract ... that grants the right to the exclusive or nonexclusive sale of carbonated beverages or non-nutritious beverages or non-nutritious food," unless the Board takes a number of actions. (Ed. Code, § 35182.5.)

#### 2. Food Service Management Company Contracts

- a. The district may contract with a food service management company ("FSMC") to perform some or all of the following services related to food management and kitchen services: bookkeeping, menu development, preparation of reimbursement claims, organization and maintenance of program documents (such as daily meal counts, menus, and menu production records), meal preparation and service, consulting services, and purchasing services.
- b. California school districts that receive federal funds for food and lunch programs must follow federal procurement guidelines when contracting with FSMCs. The California Department of Education ("CDE") has determined that to comply with these federal regulations (7 C.F.R. §§ 210.16, 210.21), school districts may use the RFP process to award the contract to the lowest bidder who best meets the District's needs and stated objective, subject to CDE review.
- c. CDE requires school districts to submit the entire RFP package for review to determine if the proposal documents meet CFR requirements criteria.

### B. Pupil Transportation Contracts



#### 1. Contracting Options

- a. The District may provide for transportation of pupils to/from school if the Board finds the transportation is advisable and for good reason. (Ed. Code, § 39800.) The District may provide the services itself or may contract with a common carrier, municipally owned transit system, responsible private party, the parent/guardian of the pupil, or the county superintendent of

schools. (Ed. Code, §§ 39800, 39801.) Any contract must comply with "contracting out" restrictions under Education Code section 45103.1.

- b. Whether provided by the District or by a third-party, pupil transportation services, drivers, and school buses are all subject to strict safety requirements, including under the Education Code, Vehicle Code, and regulations adopted by the California Department of Education and the Department of the California Highway Patrol. The District should familiarize itself with these requirements or consult with legal counsel.

## **2. Bidding and Contract Term**

- a. When contracting with a private party for pupil transportation services in an amount more than ten thousand dollars (\$10,000), the District must follow the formal bidding process under Public Contract Code sections 20111 and 20112. However, the District may award the contract "to other than the lowest bidder." (Ed. Code, § 39802.)
- b. The contract term for pupil transportation services may not exceed five years, although the parties may jointly renew the contract at the end of the term. (Ed. Code, § 39803(a).) Additionally, the parties may annually negotiate contract provisions to maintain an equitable pricing structure. (Ed. Code, § 39803(c).)

## **C. Requirements Contract (Equipment Only)**

A contract covering long-term district requirements (up to five years) for an item may be used when the total quantity required cannot be definitively fixed but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. If the District enters into a "requirements contract" for particular item(s), it is expected that the District will purchase all needed items from that vendor and not purchase those items from another source.

## **D. E-Rate Contracts**

### **1. E-Rate Definition**

The common term used to reference the Schools and Libraries Program administered by the Universal Service Administrative Company, a federal program that provides discounts to assist schools in obtaining affordable telecommunications and internet access. Information on E-Rate is provided on the USAC website.

E-Rate supports connectivity, the conduit or pipeline for voice and data communications, using telecommunications services and the internet.

### **2. School districts may request funding under four (4) categories of service:**

- a. Telecommunications,
- b. Internet access,
- c. Internal connections, and
- d. Basic maintenance of internal connections.

**3. School districts must provide certain resources, including:**

- a. End-user equipment (e.g., computers, telephones, etc.),
- b. Software,
- c. Professional development, and
- d. The other elements that are necessary to utilize the connectivity funded by E-Rate.

**4. Determining Discounts**

The primary measure for determining E-Rate discounts is the percentage of all District students eligible for free- and reduced-price lunches under the National School Lunch Program, calculated District-wide. The District then uses the E-rate Program discount matrix to convert that resulting single percentage figure into an E-rate Program discount rate. Discounts range from 20% to 90% of the cost of eligible services.

**5. School districts must comply with the most conservative procurement process; and in all cases, must demonstrate some type of competitive negotiation process was conducted to select the vendor.**

**E. Lease-Purchase Transactions**

**1. Statutory Authority**

**a. Equipment**

Education Code section 17450 states that school districts may lease or lease-purchase the following: (1) school buses, (2) other motor vehicles, (3) test materials, educational films, and audiovisual materials, and (4) all other items defined as equipment or service systems in the California School Accounting Manual. An equipment lease-purchase may not exceed the useful life of the item, and in no event may the term exceed ten (10) years. (Ed. Code, § 17452.)

**b. Relocatable Buildings**

Relocatable buildings are not considered "equipment" and instead fall under the purview of Education Code sections 17400 and 17597, which contemplate lease-purchase arrangements involving relocatable buildings.

**2. Elements of the Lease-Purchase Transaction**

A lease-purchase transaction for equipment, materials, supplies and relocatable buildings generally involves the simultaneous occurrence of distinct transactions, as follows:

**a. Purchase of Item(s)**

The District must enter into an agreement to purchase the item from a vendor. This typically occurs after a competitive bidding process or use of another school district's bid through "piggybacking." This agreement should set forth the vendor's responsibilities for the equipment, delivery, condition,

warranties, and like. If the District piggybacks on another agency's contract, the District must ensure that the vendor signs a contract with the District and is bound by a contract with the District that includes the terms and conditions of the original contract on which the District is piggybacking. (See section, above, for details on piggyback requirements.)

#### **b. Financing the Transaction**

The Lease-Purchase Agreement is a separate contract between the District and the entity that will be providing the financing for the District's acquisition of the items. Sometimes financing is provided by the vendor, or a financing arm of the vendor, and sometimes financing is provided through totally independent third-party financing companies. The financing agreement normally requires the financing company to pay the vendor for the equipment on the District's behalf. Financing leases usually provide for title to transfer to the District only after the lease payments are fully paid. The lease-purchase agreement sets forth the terms associated with the leasing of the asset. Most lease-purchase agreements are extremely difficult to terminate, and often are terminable only if the District lacks sufficient funds to make the yearly payments. Financing leases must have either a non-appropriation clause or an abatement clause to comply with applicable case law. (*City of Los Angeles v. Offner* (1942) 19 Cal.2d 483, 486-87; *Dean v. Kuchel* (1950) 35 Cal.2d 444, 448.)

#### **c. Maintenance and Other Services**

- i. Maintenance services for equipment acquired through lease-purchase are not appropriately included in the financing agreement. Services such as maintenance should either be part of the District's agreement with the vendor or through a separate maintenance contract. Services that are incidental to the purchase of a piece of equipment, however, such as delivery and installation charges, may be included in the lease financing agreement.
- ii. While the financing of construction work that is part of a project that involves a relocatable building purchase is possible, it is not appropriate to use a relocatable lease-purchase agreement to fund that kind of work. Other more complex financing mechanisms must be used to accomplish these kinds of projects.

#### **d. Legal Review/Opinion of Counsel**

- i. The statutes that provide for a school district's ability to lease and lease-purchase are complex. In certain cases, the governing board must take specific kinds of actions and make specified findings before entering into a financing agreement. Legal counsel should be consulted about applicable requirements and resolutions before the board takes any action regarding the transaction.
- ii. Financing companies usually require the school district's legal counsel to provide an opinion of counsel to the financing company, opining that the transaction was completed in compliance with all applicable laws, including procurement and bidding requirements. Legal counsel will

need to review all lease-purchase documents and to approve the bidding or other procurement process.

- iii. The District should forward all documents, particularly all applicable bidding or piggyback documents, to legal counsel at the beginning of any lease-purchase process. Before legal counsel can give an opinion on a transaction, counsel needs to be sure that all legal prerequisites have been met. Early consultation is vital to timely compliance with this requirement.

**[END OF DOCUMENT]**

## Sacramento City Unified School District Procurement Procedures

### GOODS, EQUIPMENT AND NON-CONSTRUCTION SERVICES

A formal contract required for services and purchases of goods and equipment exceeding \$25,000, current proof of automobile, general liability and workers compensation insurance and a W9 are required from all vendors. Contracts may be required for amounts less than \$25,000 for services that include specialized work. State law limits contract terms to 5 years.

Purchase Amount	Procurement Procedure Requirements				State Law/Policy Reference
<b>\$0-7,499</b>	Provide price source (e.g., phone, fax, email, vendor quote)				Providing quotes is for contracts under the bid threshold. Per PCC 20111(a), bid threshold adjusted annually by the State Superintendent of Instruction
<b>\$7,500 - 19,999</b>	Provide two (2) quotes (e.g., phone, fax, email, vendor quote) - attach to requisition				
<b>\$20,000 - 109,300</b>	Provide three (3) written quotes (e.g., fax, email, vendor quote) - attach to requisition				
<b>\$0-\$10,000</b>	Federal Micro Purchase Threshold (no competitive quotes required-consider reasonable price) Program operators (i.e., CNS) may self-certify a threshold up to \$50,000 annually with required self-certification documentation.				Per PCC 20111(c), follow Federal – 2 CFR 200.318 to 200.326. For Fund 13 Allowable Uses, see <a href="https://www.cde.ca.gov/ls/nu/sn/mbsnp052020.asp">https://www.cde.ca.gov/ls/nu/sn/mbsnp052020.asp</a> , i.e. capital expenditures with unit cost ≥ \$5,000 require prior written approval
<b>\$10,001-\$250,000</b>	Federal Small Purchase Threshold (must obtain price quotes from adequate number of sources)				
<b>&gt; \$250,000</b>	Federal-Formal Procurement Method required (sealed bid/request for proposal) public advertise				
<b>&gt; \$109,300 (Over bid threshold)</b>	Internal Control: Purchasing Manager reviews all requisitions for compliance, including Federal / Emergency justification	Formal Bids for goods or services includes newspaper advertisement for two (2) consecutive weeks, and receipt of vendor responses at a specific deadline.	Selection is made based on lowest, responsive and responsible bidder meeting specifications and vendor qualifying criteria, or else reject all bids.	Board of Education approves all purchases that exceed the bid threshold of \$109,300 as an action item.	PCC 20111, 20112

### COOPERATIVE PURCHASING OR PIGGYBACK CONTRACTS (GOODS, EQUIPMENT, SERVICES)

Contracts for goods or services that are currently effective and have been competitively bid and awarded by fellow governmental entities, and no further bidding is required by SCUSD. Contracts include discounted pricing and may also provide for other incentives such as extended equipment warranties, rebates to SCUSD, free space design for furniture and other. Exception to this is federally funded purchases that may require a competitive bid. Certain contracts require a Board resolution, described below.

Purchase Amount	Contract Type	Limitations	Contracting / Approval Method	State Law/Policy Reference
Any amount	California Multiple Award Schedule (“ <b>CMAS</b> ”) contract established by Department of General Services.	<b>CMAS</b> contract for purchase of <b>goods, information technology and services</b> . Price in contract is a ceiling. Public Works services is limited to 50% of the total contract value. Limitation on carpet, resilient flooring, synthetic turf, lighting system over formal bid threshold	Perform due diligence for products/pricing in CMAS base schedule. Agreement incorporating CMAS contract is required unless negotiate different terms. No Board resolution required. Board approves on consent.	PCC 10298 & 10299



**Sacramento City Unified School District Procurement Procedures**

		other than for new construction (requires use of skilled and trained workforce).		
Any amount	Purchase pursuant to agreement competitively bid by a joint powers authority (“JPA”).	<b>JPA</b> contract for purchase of <b>goods and services</b> . Examples: NIPA, OMNIA, Sourcewell or TIPS. Price in JPA contract is a ceiling.	Perform due diligence for products/pricing in JPA price list. Agreement incorporating JPA contract is required. One-time Board resolution to join JPA; not required to approve contract as action item.	GOV 6500, et seq.
Any amount	Public agency previously competitively bid lease or purchase in accordance with law and contract has clause allowing “piggyback.”	<b>Piggyback</b> on public contract for <b>lease of data-processing equipment or purchase of materials, supplies, equipment, vehicles, etc.</b> Must lease/purchase on the same terms and at the same prices. Limited to incidental services (10% or < of contract value).	Perform due diligence for products/pricing in awarded contract. Agreement incorporating piggyback contract is required. Board approves contract and makes finding by resolution that use of underlying piggyback contract is in District’s “best interest.”	PCC 20118

**PUBLIC WORKS/CONSTRUCTION**

Facility construction, alteration, renovation, demolition, painting, repair, fixed or modular furniture system installation. SCUSD has adopted California Uniform Public Construction Cost Accounting Act (“CUPCAA”), with thresholds for no bid, informal bid, or formal bid, below.

Purchase Amount	Procurement Procedure Requirements	Contract Terms	Approval Method	State Law/Policy Reference
<p><b>\$0 - 60K</b></p> <p><b>No Bid</b></p>	<p>Three (3) quotes from contractors registered with the CA State Licensing Board and Dept. of Industrial Relations (DIR).</p> <p>District reports to DIR/file PWC-100 form if project within 30 days of award or before work commences, whichever occurs first: \$25K and above for new construction, alteration, installation, demolition or repair, \$15K and above for maintenance work.</p>	<ul style="list-style-type: none"> <li>• Formal Contract</li> <li>• Prevailing wages</li> <li>• &gt;\$25,000: Electronic filing of certified payroll report</li> <li>• &gt;\$25,000: Payment/performance bonds from approved CA Surety</li> <li>• Insurance meeting required SCUSD limits.</li> <li>• All tiers of contractors required to be licensed and registered with DIR.</li> </ul>	<p>Purchase Order for Public Works (that includes standard terms) or contract, if required, submitted for Board approval on consent.</p>	PCC 20111.5, ED 17424
<p><b>\$60 - 200K</b></p> <p><b>Informal Bidding</b></p>	<p>Notify all relevant contractors on the Pre-Qualified Contractors List and/or advertise in 4 trade journals at least 10 days before bid opening. Award to lowest responsive, responsible bidder or reject all bids. If no bids received, negotiate directly with a contractor.</p>	<ul style="list-style-type: none"> <li>• Formal Contract</li> <li>• Prevailing wages</li> <li>• Electronic filing of certified payroll report</li> <li>• Payment/performance bonds from approved CA Surety</li> </ul>	<p>Contract submitted for Board approval as action item.</p> <p>If all bids &gt;\$200,000, Board resolution with 4/5 vote required to award contract at \$212,500 or</p>	PCC 22032(b) & 22034, 22036

**Sacramento City Unified School District Procurement Procedures**

	District reports to DIR/file PWC-100 form within 30 days of award or before work commences, whichever occurs first.	<ul style="list-style-type: none"> <li>Insurance meeting required SCUSD limits.</li> <li>All tiers of contractors required to be licensed and registered with DIR.</li> </ul>	less to lowest bidder.	
			<b>Federal-Formal Procurement Method</b> required (sealed bid/request for proposal) public advertise	
<b>&gt; \$200K Formal Bidding</b>	<p>Advertise bids in newspaper once, 14 days before bid opening and in 4 trade journals 15 days before bid opening. Award to lowest responsive, responsible bidder or reject all bids. If no bids, can negotiate directly with a contractor.</p> <p>Requires a cashier/certified check or bid bond from a CA approved surety – bonds are returned to bidder after award unless bidder fails to execute contract.</p> <p>District reports to DIR/file PWC-100 form within 30 days of award or before work commences, whichever occurs first.</p>	<ul style="list-style-type: none"> <li>Formal Contract</li> <li>Prevailing wages</li> <li>Electronic filing of certified payroll report</li> <li>Payment/performance bonds from approved CA Surety</li> <li>Insurance meeting required SCUSD limits. All tiers of contractors required to be licensed and registered with DIR.</li> </ul>	Contract submitted for Board approval as action item. Board may reject bid if declares at hearing that project can be more economically performed by District employees and notice is mailed to low bidder 2 business days before hearing. If all bids rejected, abandon or readvertise, or perform by force account with Board resolution by 4/5 votes.	PCC 22032(c), 22036-22038
Change Orders on Contracts if more than \$15,000 bid threshold or 10% of original contract price (whichever greater)	Formal Bidding required (see above). No bidding required if less than bid threshold or all change orders cumulatively do not exceed 10% of original contract price (whichever greater). If over 10%, consult with legal counsel to see if facts exist for Futility Resolution.		Submitted for Board approval on consent if no bid is required; as action item if formal bidding is required.	PCC 20118.4

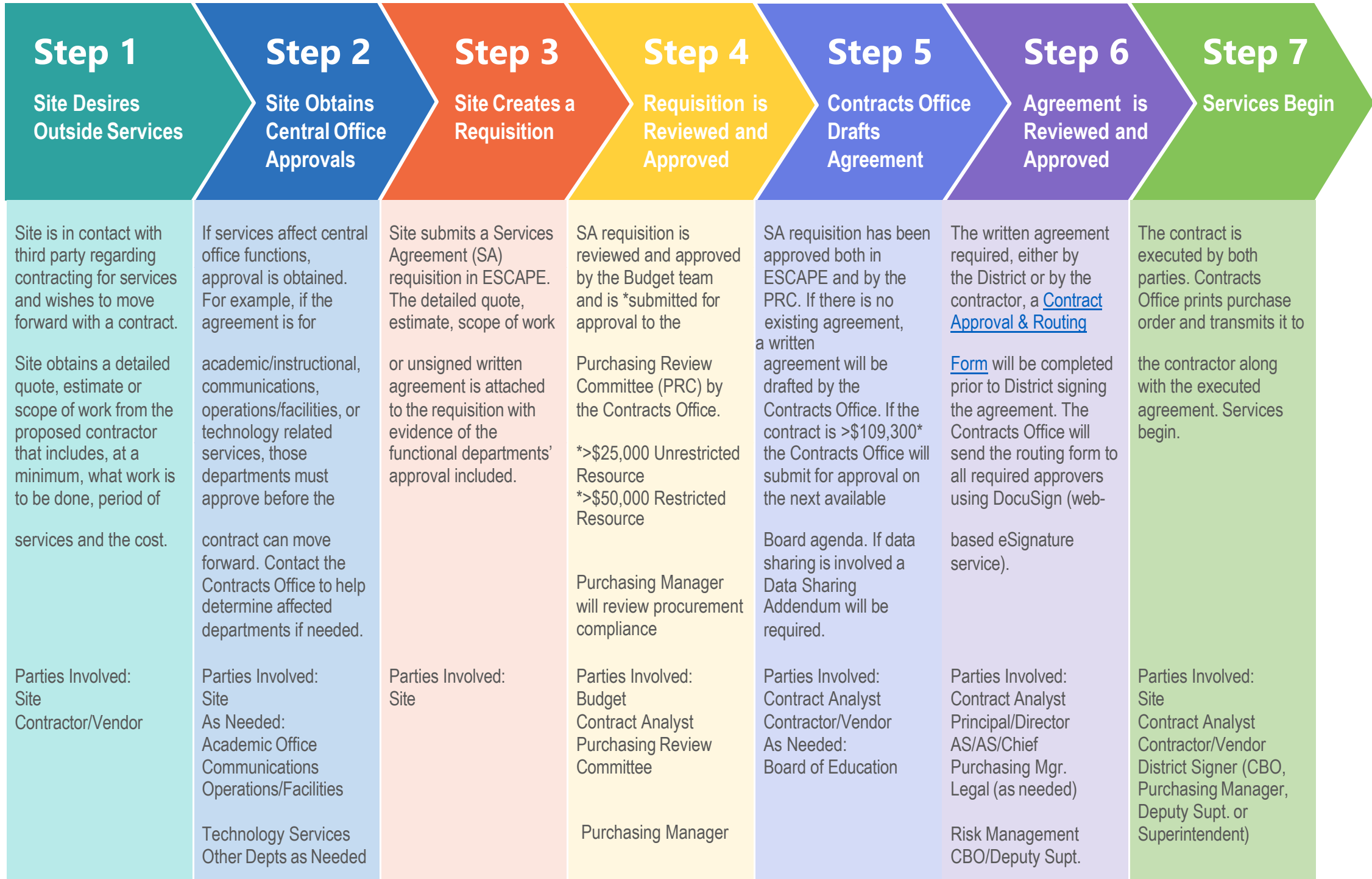
**SINGLE/SOLE SOURCE AND EMERGENCY PROCUREMENT**

**Single/Sole Source** - Other vendor sources exist in the market, vendor selected because of a regulation or existing proprietary equipment, or program needs. Or, no other vendor sources available in the market; few instances of this exist, typically connected to a copyright, trademark or patent. Purchase from single/sole source requires Board resolution and including the finding in Notice to Bidders or Request for Proposals, whichever is applicable.

**Emergency Repairs (State/CUPCAA)** - Board may proceed at one to replace or repair, without giving notice of bid, by resolution with 4/5 vote finding that emergency will not permit a delay and action is necessary for emergency response. If no notice for bids given, Board shall review emergency action at next regular meeting (and each meeting until emergency is terminated) to determine by 4/5 vote that need continue to exist. (PCC 22035 & 22050)

## Sacramento City Unified School District Procurement Procedures

**Emergency Purchases (Federal)** - Only permitted when the Public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or After solicitation of a number of sources, competition is determined inadequate. (2 CFR 200.320 (c).) The District's requisition process requires compliance review and approval by assigned Budget department staff, Assistant Superintendent of Business Services, Chief Business Officer, and Purchasing Manager.



\*Updated annually on January 1  
SCUSD Contracts Flowchart 1/1/23