



Simi Valley Schools

SIMI VALLEY UNIFIED SCHOOL DISTRICT

Procurement Manual

Based upon
“Code of Conduct and Procurement Procedure Checklist”
California Department of Education, Nutrition Services Division
Dated July 27, 2016

Applicable as of January 1, 2024

101 W. Cochran St., Simi Valley, CA 93065

Overall Functions of This Procurement Manual

1. To provide our District staff with an understanding of what requirements govern the process of making procurement decisions, and how we do our best to adhere to them.

Requirements are rooted in “legal code,” which includes, but is not limited to, Civil Code, Code of Federal Regulations, Education Code, Government Code, and Public Contract Code. References to code are provided throughout the manual, and the code itself is detailed in Appendix I. Whenever a discrepancy exists between this manual and code, code prevails. In such a case, please notify the Director of Purchasing so this manual may be corrected or clarified.

2. To maintain a procurement environment providing free and open competition. Examples of situations considered to be restrictive of competition include, but are not limited to:
 - Placing unreasonable requirements on firms in order for them to qualify to do business.
 - Requiring unnecessary experience and excessive bonding.
 - Non-competitive pricing practices between firms or between affiliated companies.
 - Non-competitive contracts to consultants that are on retainer contracts.
 - Organizational conflicts of interest.
 - Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
 - Any arbitrary action in the procurement process.
(2 CFR, Section 200.319[a]) (SVUSD AR 3230)
3. To be used IN ADDITION to the District’s Procurement Code of Conduct.
4. To comply with Federal Regulation 2 CFR 200.318[a] which says, “The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in 200.317 through 200.327.”
5. To complement Board Policy (BP) 3230 and Administrative Regulation (AR) 3230.

Procuring Goods and Services with Federal Grants

When procuring goods and services with federal grant monies, we must comply with the federal standards contained in 2CFR 200.317 through 200.327, along with Appendix II of Part 200, and with any applicable California bidding or procurement law or district policy that is more restrictive. Highlights of the standards include competition, methods of procurement, small & minority businesses, domestic preference, recovered materials, bonding, and contract provisions.

To the extent practicable, preference must be given to the purchase, acquisition, or use of goods, products, or materials from the United States.
(2 CFR 200.322)

Considering Surplus/Excess Federal Property

When it is feasible and will reduce project cost, staff is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property. (2 CFR, Section 200.318[f]) (EDC 17602)

Once approved as an eligible organization, surplus/excess property is available from both the Federal and State government through the Federal Surplus Property Program administered by the California Department of General Services. Organizations are responsible for all service and handling fees involved in obtaining property, including all transportation costs. Since the DGS is a not-for-profit entity, Service and Handling fees allow them to cover their overhead expenses. The current Service and Handling fee for the Federal Program is based in an item's Original Acquisition Cost as follows: 9 percent of the OAC or \$100, whichever is greater. An item must be put into service within one year. The item belongs to the organization after 18 months of service. If determined by the DGS that an item was not put into service within one year, or is not being used for the correct purpose, organizations must return the item at their expense, and pay the full OAC as a penalty. The fee for State surplus property will be based on the average auction price. Currently warehouses are located in Barstow, Tracy, Camp Pendleton, and 29 Palms. As nothing appears to be within a reasonable distance from the District, the program does not appear to be feasible.

Avoiding Duplication of Goods and Services

Our District's procurement program includes a predetermined approval process whereby each and every requisition, prior to becoming an actual purchase order, must be reviewed/approved by various departments, including those unrelated to the initiating department/site. Once initiated, requisitions are reviewed and processed by the Purchasing Department, then Fiscal Services, forwarded to the individual with budgetary authority, and finally reviewed and signed by either the Director of Purchasing, the Associate Superintendent of Business Services, or the Superintendent. This helps provide the necessary oversight to ensure that there is no duplication or acquisition of unnecessary goods or services.

With centralized purchasing, staffed with professionals whose job it is to procure items representing "best value," the Purchasing and Food Services departments may take advantage of opportunities to consolidate, as well as break out procurements, in order to obtain more favorable pricing. Depending on a number of variables, including but not limited to cash flow, price, interest rate, payment, and duration, the District will evaluate the pros and cons to leasing versus purchasing where appropriate.

Stocked items in our warehouse are tracked within our accounting software. Orders are generated by calculating a "reorder point," which represents the minimum amount of stock needed to last for a specific amount of time, currently two months of the 10-month school year based upon a one-year average of the prior three years. An order amount is then calculated by subtracting from the reorder point, the sum of what we currently have in stock added to what is already on order.

For example, assuming the prior three years usage for item ABC are 46, 48, and 56, then the average of the three years is 50. So, two months of the 10-month school year is 10. If there are four items on-hand, and none on-order, a minimum of six units of ABC is needed to last for a two-month period. As items are reviewed several times monthly, this prevents us from completely depleting our available stock.

With regard to Food Services, Berylwood Elementary School maintains our central kitchen facility, ordering frozen and fresh food products, paper goods, and dairy items. The central kitchen is the site that receives fresh and frozen food products for daily lunches that are then prepared, packed, and shipped to all of the SVUSD elementary school sites daily. The central kitchen receives dairy products each day, paper goods weekly, fresh and frozen items three days a week. Each individual elementary school site orders their own dairy and paper goods on a weekly basis.

Each secondary school site orders their own frozen and fresh food products three times per week (or as needed), paper goods weekly, and dairy items on a daily or as needed basis. Orders are received by the Food Services Buyer, who processes the orders using the Harris software program. The Food Services Director or Operations Manager approves the orders and then they are sent to the vendors.

On the last working day of the month, the central kitchen, elementary school sites, and secondary school sites do an inventory of all products on hand; fresh, frozen, dairy and paper goods. The Food Services Buyer inputs monthly inventory into the Harris software program, which is also the program that is used to support accounts payables.
(2 CFR, Section 200.318[d]) (SVUSD AR 3230)

Intergovernmental Procurement

By purchasing through the California Department of General Services, our District takes advantage of the savings inherent in large contracts pre-negotiated at the State level. Our District also takes advantage of pre-negotiated contract pricing through Cooperative Procurement groups like TCPN and U.S. Communities.

When using either a State contract, or the contract of a Cooperative Procurement group, the following must be included on our purchase order:

1. The group name (ex: CA State CMAS, or Omnia).
2. The contract number.

In addition, our Board recognizes that it is in the best interest of the District to “piggyback” onto existing contracts of other public agencies, and has therefore provided their approval to do so. When piggybacking on another agency’s contract, the following is required:

1. The executed original contract detailing the piggyback clause, which must allow our District to use the contract. For example, “all public agencies within Ventura County, California,” or “all agencies within the State of California,” would be fine. However, something like, “all Los Angeles, Orange, and San Diego County public agencies” would not be acceptable.
2. The awarding Board’s authorization to award the contract.
3. Proof of Advertising of the original bid’s “Notice to Bidders.”
4. The contract must still be valid. If extended, the awarding Board’s authorization to extended.

The above documents must be saved as they may be requested by the County. The following must be included on our purchase order:

1. A notation as “Piggyback” followed by the awarding agency’s name and contract title.
2. Attach to our Purchase Order both the awarding Board’s authorization of the contract with which we are piggybacking on, as well as our Board’s authorization to allow piggybacking.
(2 CFR, Section 200.318[e]) (PCC 20118)

Small and Minority Businesses, Women Business Enterprises, and Labor Surplus Area Firms

Our District is inclusive of ALL vendors that want to participate in our solicitations, promoting a procurement environment of free and open competition, rooted in fairness and integrity. All vendors are equally afforded the opportunity to provide the District with their potential “best value” solutions to the District’s needs.

(2 CFR, Section 200.321)

Contractor Involvement in the Development of Specifications, Bid Documents, Contracts, etc...

In order for us to ensure objective contractor performance and eliminate unfair competitive advantage, no contractor/consultant is allowed to compete for any related procurement opportunity when the contractor/consultant developed or drafted any of the following:

- Specifications
- Requirements
- Statements of Work
- Invitations for Bids
- Requests for Proposals

(2 CFR, Section 200.319[b]) (GOV 1090) (SVUSD AR 3230)

Purchase Procedures for Equipment, Materials (Except Instructional), Supplies, Goods, Services (Except Construction and Professional), and Repairs (Non-Public Project)

See Table 1 • Procurement Thresholds for Equipment, Materials, Supplies, Services, and Repairs
Micro Purchase Procedures
Informal Purchase Procedures for Small Purchases
Formal Purchase Procedures for Large Purchases

Purchase Procedures for Public Projects

See Table 2 • Procurement Thresholds for Public Works
California Uniform Public Construction Cost Accounting Act (CUPCCAA)

Non-competitive Procurement

A procurement environment of free and open competition helps encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that are equal in essential respects to existing products, yet provide a lower cost to the taxpayers. By adhering to procurement code, we help to promote such an environment.

An exception to the above, which limits procurement to a single source, may be necessary under certain conditions. California code allows for limiting both the vendor, as well as a good or service, related to public works under the following conditions:

1. In order to field test a product.
2. To match other products in use on a particular public improvement.
3. To obtain a necessary product only available from one source.
4. To respond to an emergency.

Federal code allows limitation to a single source, without any reference to public works, under the following conditions:

1. An item is available only from a single source.
2. A public emergency will not permit a delay resulting from competitive solicitation.
3. Non-competitive proposals have been expressly authorized by the Federal agency or pass-through entity in response to a written request.
4. After solicitation of a number of sources the competition is determined inadequate.

In cases of non-competitive procurement involving federal funds, get written pre-approval from the California Department of Education and save all related documentation.

Any situation that may involve non-competitive procurement should first be discussed with the Director of Purchasing.

(2 CFR, Section 200.320[c]) (PCC 3400) (SVUSD AR 3230)

Cost and Price Analysis

When engaged in any “formal” procurement, as part of our due-diligence, it is required that a cost or price analysis be performed. Such analysis may vary depending upon the situation, but at the very least, independent estimates must be made prior to receiving bids or proposals. This provides us with a “base” to use when evaluating vendor responses, helping with the decision to accept or reject all responses.

In any situation involving non-competitive procurement, and in cases where cost analysis is performed, profit must be negotiated as a separate element of the contract price. In order to establish a fair and reasonable profit, consideration must be given to the following:

1. Complexity of the work to be performed.
2. Risk borne by the contractor.
3. Contractor's investment.
4. Amount of subcontracting.
5. Quality of its record of past performance.
6. Industry profit rates in the surrounding geographical area for similar work.

For a detailed list of what costs are allowable for contracts, see 2 CFR, Section 200, Subpart E.

As outlined above, the profit element of a contract is a function of several factors reflecting the vendor's stake in delivering a solution to our need. Unrelated to those factors are the underlying costs represented in the proposed contract, so the following methods for contracting must NOT be used:

1. Cost plus a percentage of cost.
2. Percentage of construction cost.
(2 CFR, Section 200.324)

Advertisements

For purchases above bid threshold, it is to our advantage to obtain competitive quotes from all responsible interested bidders. Our District advertises our Invitations for Bids in the Ventura County Star. Advertisements are published once a week, for two consecutive weeks. At a minimum, our advertisements include the following:

1. The work to be done, or the materials to be furnished.
2. The time, date, and location of any mandatory pre-bid conference, site visit, or meeting, and details when and where the project documents, including the final plan and specifications are available. Any mandatory meeting shall not occur less than 5 calendar days after the publication of the notice.
3. The time and place bids will be opened. Even if bids are not opened at the exact time published, no bid is accepted after that time.
(2 CFR, Section 200.320[b]) (PCC 20112) (PCC 6610)

Clear Description of Material, Product, or Service

In order to provide us with acceptable materials, products, and services, we must include for our vendors a clear and accurate description of any technical requirements expected. Features unrelated to our performance expectations are not to be included, preventing us from restricting competition. A statement of the qualitative nature of the material, product, or service may be included. Detailed product specifications should be avoided whenever possible, instead using the minimum essential characteristics and standards we expect. If impractical or uneconomical to make a clear and accurate description of the technical requirements, it is acceptable to include the phrase “(brand name) or equivalent” as part of the description. In this case, the specific features of the named brand that are expected must be detailed.

(2 CFR, Section 200.319[d][1]) (PCC 3400[b]) (SVUSD AR 3230)

Time and Materials Contracts

Time and materials contracts are permitted ONLY IF:

1. A determination has been made that no other contract type is suitable.
2. The contract has a ceiling price that if the contractor exceeds, they do so at their own risk.

As time and materials contracts provide no profit incentive for the contractor to control costs, a ceiling must be included (see above) and staff is encouraged to assert a high degree of oversight.

(2 CFR 200.318[j])

Brand Name or Equivalent

To make it inviting for vendors to submit competitive proposals, no specific product should ever be solicited. Rather, if it is impractical or uneconomical to develop a clear and accurate description of the technical requirements for the product or service we seek, the term “(brand name) or equivalent” may be used to define the performance or other prominent features we require. The specific features of any named brand that must be met must be clearly stated.

(2 CFR, Section 200.319[b][6] & [c][1]) (SVUSD AR 3230)

Recycled Products

Our District purchases recycled items, rather than non-recycled items, when the quality of the recycled item is the same or better, and when the recycled product is available at the same or lower price.

Printer or duplication cartridges are not purchased from any vendor that places restrictions on the recycling or remanufacturing of cartridges.

(PCC 12156, 22150, 22152)

Evaluation Procedures

In addition to a clear description of the material, product, or service desired, we are obligated to identify all requirements which our respondents must fulfill, along with all other factors to be used in evaluating their bids or proposals. Examples of these additional requirements/factors are as follows:

- Delivery dates/days, times, and frequency.
- Requirements for delivery such as the presence of stairs, truck access, etc.
- Minimum dollar value for each delivery drop.
- Type of storage available.
- Expected timeline for project completion.

Respondents must demonstrate that they are responsible by providing information on experience and past performance. To be considered responsible, a respondent must:

1. Be capable of performing successfully under the terms and conditions of the contract.
2. Clearly indicate compliance without material deviation from the solicitation's terms and conditions.
3. Possess, at the time of contract award, the experience, facilities, reputation, financial resources, and other factors necessary to fulfill the terms of the contract successfully.

In order to verify the above, references must be included with our solicitations requesting the names of prior individuals/agencies for which the respondent has completed similar contracts.

When factors other than lowest price will be evaluated as part of the solicitation, the criteria for evaluating such factors must be determined in advance and included in the solicitation. This allows our vendors to prepare complete responses, presenting our District with their "best value" proposal. There remains some confusion with regard to Bids versus Requests for Proposal (RFP). State agencies are permitted to use either the Bid or RFP process when awarding their contracts (PCC 10344). The Simi Valley Unified School District is NOT a state agency.

As a public school district, most of our contracts are awarded based upon section 20111 of the Public Contract Code (PCC). This section **requires our contracts to be awarded to the lowest responsible bidder**, unless all bids are rejected. Section 20118.1 of the PCC allows contracts for the procurement and/or maintenance of "electronic data-processing systems and supporting software" to be awarded to one of the three lowest responsible bidders. Section 20118.2 of the PCC allows contracts for the procurement of "computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus" through an RFP process. In this case, the award is made to the "qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the school district with price and all other factors considered." This does not apply to the procurement of any product that is available in substantial quantities to the general public.

With the above in mind, it is clear that California PCC permits us to use the RFP process ONLY for technology type items. However, if advantageous for the procurement of non-technology items, with clear descriptions of what we expect in terms of a responsive bid, using an evaluation and selection process we can disqualify all non-responsive bids, then award to the lowest responsible bidder. The basic framework is as follows (from California State Contracting Manual):

1. Bidders are required to submit their proposals with the bid price and all cost information in a separate, sealed envelope. All expectations are clearly described, allowing our bidders to fully understand what is required in order to be considered “responsive” to our solicitation.
2. All proposals received are reviewed objectively to determine those that meet our requirements as specified. Those that do are considered responsive. Proposals that do not are considered non-responsive and disqualified.
3. The sealed envelopes containing the bid price and cost information for responsive proposals are then publicly opened and read.
4. The contract is then awarded to the lowest responsible bidder, complying with PCC 20111.

As our District operates a federal non-profit child nutrition program, bids in support of the program are **awarded to the most responsive and responsible party, with price being the primary consideration, but not the only determining factor.** (PCC20111.c)

(2 CFR, Section 200.319[d][2]) (PCC 20118.2) (SVUSD AR 3230)

Bonding Requirements

For construction or facility improvement (public works) contracts, or subcontracts which exceed the CUPCAA threshold of **\$60,000**, we are required to obtain bid security as assurance that the bidder will, upon acceptance of the bid, execute the contract documents as required and within the time specified. Our District requires bid security in the amount of 10 percent of the total bid, and may be in any of the following forms:

1. Cash.
2. A cashier’s check made payable to our District.
3. A certified check made payable to our District.
4. A bid bond made payable to our District.

A direct contractor awarded a contract greater than **\$25,000** is required to provide a **Payment Bond** for 100 percent of the contract price, assuring payment to all persons supplying labor and materials. A Performance Bond may also be required.

A direct contractor awarded a contract greater than **\$60,000** is required to provide a **Performance Bond** for 100 percent of the contract price, assuring fulfillment of the contractor’s obligations.

It is our responsibility to verify all bonds (Bid, Payment, Performance) as being executed by an admitted surety insurer.

(2 CFR, Section 200.326) (PCC 20111) (CIV 9550) (CIV 9554) (CCP 995.311)

Certifications

There are a variety of provisions that must accompany our solicitations and contracts. Any contract we draft, along with any required certifications, should first be reviewed by legal counsel before being included in any solicitation documents, or before being signed by either the District or our vendor. The following are summaries of certifications required, as applicable:

Federal Funds Involved

- Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
(2 CFR, Appendix II to Part 200[A])
- Contracts in excess of \$10,000 must address termination for cause and for convenience by the District, including the manner in which we will be affected and the basis for settlement.
(2 CFR, Appendix II to Part 200[B])
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
(2 CFR, Appendix II to Part 200[C])
- Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
(2 CFR, Appendix II to Part 200[D])

- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
(2 CFR, Appendix II to Part 200[E])
- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
(2 CFR, Appendix II to Part 200[F])
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
(2 CFR, Appendix II to Part 200[G])
- Debarment and Suspension (Executive Orders 12549 and 12689). A contract award of \$25,000 or more (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
(2 CFR, Appendix II to Part 200[H])
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in

connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(2 CFR, Appendix II to Part 200[I])

State and Local Funds (non-federal)

- Non-collusion Declaration. Applicable to bids for public works. (PCC 7106)
- DVBE documentation. Applicable to bids for public works. (EDC 17076.11)
- Certification of Contractor and Subcontractor(s) Division of Industrial Relations Registration. Applicable to contracts for public works. (LAB 1725.5[a][1])
- Certificate of Workers' Compensation Insurance. Applicable to contracts for public works. (LAB 1725.5[a][2][A])
- Contractor's License. Applicable to contracts for public works. (LAB 1725.5[a][2][B])
- Certification of Prevailing Wage and Related Labor Requirements. Applicable to contracts for public works. (LAB 1771) (2 CFR, Appendix II to Part 200[D])
- Fingerprint Certificate. Applicable to contracts for public works. (EDC 45125.2)
- Drug Free Workplace Certificate. Applicable to all contracts awarded. (GOV 8355)
- Iran Contracting Act. Applicable to contracts of \$1,000,000 or more. (PCC 2203[a], 2204[a][b])
- CA Executive Order N-6-22 Economic Sanctions Against Russia. Applicable to contracts of \$5,000,000 or more.
- CA Proposition 12 (2018) – Farm Animal Confinement (Child Nutrition) (3 CCR 1320-1326)

Suspension and Debarment

As a district, we want to do business with reputable vendors. In order to maintain such a standard, we include within our solicitations notice that we disallow entering into any contract with parties that are currently debarred or suspended. Federal regulations require checking for suspension and debarment of vendors with aggregate contracts of \$25,000 or more per fiscal year. At the beginning of each fiscal year, Purchasing will run a report from Escape providing a summary of prior-year expenditures for each ACTIVE vendor. Any active vendor receiving payments of \$25,000 or more will be checked against SAM for debarment, with a printout of the result placed in a binder labelled "SAM Debarment." In the event a vendor is debarred, they will be INACTIVATED in Escape and therefore ineligible for any contract award.

Any new or re-activated vendors will be checked against SAM, with a printout of the result placed in the SAM Debarment binder. Checking for debarment or suspension is done as follows:

1. At the Federal level, a list of contractors found NOT to be presently responsible, and therefore suspended or debarred, is found on the System for Award Management (SAM). The website is www.sam.gov.
2. At the State level, the Department of Industrial Relations (DIR) Division of Labor Standards Enforcement (DLSE) maintains a list of contractors barred from bidding on, accepting, or performing any public works contracts, as either a contractor, or subcontractor. The website is <https://www.dir.ca.gov/dlse/debar.html>.

(2 CFR, Section 200.214) (2 CFR, Section 180.125) (2 CFR Appendix II to part 200[H]) (LAB 1725.5[a][2][D]) (SVUSD AR 3230)

Bid Protest

Any unsuccessful bidder must have the opportunity to protest the award of a bid. Therefore, after issuing a Notice of Intent to Award, our District allows for between **three and five working days** as a “Protest Period” before awarding any contract. The code is vague in terms of the duration of the Protest Period, however, the California Code of Regulations, Office of Administrative Hearings, defines it as no less than one working day and no more than five working days after issuing the Notice of Intent to Award.

The District’s standard protest procedure is as follows:

A bidder may protest a bid award if he/she believes that the award is not in compliance with law, Board policy, or the bid specification. Unless otherwise specified in the bid document, the protest must be filed in writing with the Superintendent or designee within **three working days** after receipt of notification of the contract award, and shall include all documents supporting or justifying the protest.

The Superintendent or designee shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Superintendent or designee may also convene a meeting with the bidder in order to attempt to resolve the problem.

The bidder may appeal the Superintendent or designee's decision to the Board. The Superintendent or designee shall provide notice to the bidder of the date and time for Board consideration of the protest at least three business days before the Board meeting. The Board's decision shall be final.

(2 CFR, Section 200.318[k]) (CCR 1406) (AR 3311)

Contract Monitoring

Our District is responsible to monitor the performance of all vendors in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Some of the ways we accomplish this include, but are not limited to, the following:

- The majority of purchase orders placed for physical products are of the type, “PO with Receiving.” This prevents the invoice from being paid until the items have been physically checked by our warehouse staff, then marked as “received” within the Escape system. Invoices related to all other purchase types are not paid until signed by the individual with Budget Responsibility (or his or her designee for such purposes) for the related purchase order, acknowledging acceptable receipt of the particular goods or services. Upon receipt of invoice, price discrepancies are brought to the attention of the department/site that placed the order. Any price discrepancy in excess of 10 percent requires electronic approvals within the Escape system.
- Shipments related to Food Services are verified by site staff. Items are checked off as received, noting any discrepancies, items that were returned, damaged items, shorted quantity, or wrong items. Prior to payment, the Buyer checks the vendor’s invoice against our PO and receiving documentation for any discrepancies.
- Our Maintenance and Operations Department (M&O) managers are constantly in the field monitoring the status of contracts they initiate. In cases when a service is performed at a specific site, verification of acceptable performance is obtained from the site’s plant manager or

administration. No vendor invoice is paid until acceptable performance has been verified by our M&O Department.

- Each of our Bond public projects has a Project Coordinator/Manager assigned. Prior to the payment of any contractor's invoice, the work is verified by both the Project Coordinator/Manager and the Bond Construction Project Manager. Both must sign the contractor's invoice prior to payment, along with the Bond Program Manager and the Associate Superintendent of Business and Facilities. In many cases, a state inspector also inspects our projects.

(2 CFR, Section 200.318[b])

Maintenance of Records

As a district, it is important that we are able to justify the procurement decisions we make. Any information related to our solicitations, informal or formal, must be retained. For purchases above bid threshold, this includes, but is not limited to, the following:

- Invitation for Bids/Request for Proposal solicitation document.
- Solicitation responses from all respondents.
- All response evaluations and rationale for resulting the award.

The documents above, along with all other documents involved with our solicitations above bid threshold, are kept electronically on the District's network disk drives, and in hard-copy form in the Purchasing office.

Competitive quotes for purchases below bid threshold should be attached as one document to the associated requisition in Escape, with the lowest cost quote beginning on page 1.

(2 CFR, Section 200.318[i]) (SVUSD AR 3230)

Geographic Preference (Food Services)

Our Food Services Department, as a school food authority (SFA), has the option to apply a geographical preference to a local area determined at our discretion, when procuring unprocessed locally grown or locally raised agricultural products.

As used above, the term "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

Currently our District does not apply a geographical preference.

(7 CFR, Section 210.21[g]) (USDA SP 03-2013)

Buy American (Food Services)

Our Food Services Department, as a school food authority (SFA), is required to adhere to the Buy American provision in the National School Lunch Program. This requires us to purchase, to the maximum extent practicable (feasible), domestic commodities and products, defined as:

- An agricultural commodity that is produced in the United States.
- A food product that is processed in the United States containing a substantial amount of agricultural commodities that are produced in the United States. The term “substantial” means 51 percent or more. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed as territories of the United States.

Before utilizing any of the limited exceptions to the Buy American provision, alternatives to purchasing non-domestic food products should be evaluated, such as:

- Considering other domestic sources for the product.
- Considering a domestic product that could be easily substituted for the less expensive non-domestic product.
- Considering whether or not there is a more opportune time of year to solicit bids, as prices and/or availability change.

Exceptions to the Buy American provision, when purchasing domestic commodities and products are not practicable, exist as follows:

- The product is not produced or manufactured in the United States in sufficient and reasonable available quantities of a satisfactory quality.
- Competitive bids reveal the cost of a United States product are significantly higher than the non-domestic product. As used here, our District defines the term “significantly higher” to mean a price difference of 25 percent or greater.

If an exception to the Buy American provision is ever used, detailed documentation justifying the exception must be kept.

California law also requires preference be given to United States grown produce and United States processed foods when there is a choice and it is economically feasible. In determining “economically feasible,” consideration is given to total cost, quantity, quality of the food, as well as our budget and policies.

(7 CFR, Section 210.21[d][1-2]) (USDA SP-24-2016) (PCC 3410)

Discounts, Rebates, and Credits (Food Services)

All food service contracts, as well as solicitations for such contracts, which are either Cost-Reimbursable, or contain Cost-Reimbursable provisions, must contain provisions that require the return of any discounts, rebates, and other applicable credits. Any discounts, rebates, and/or other applicable credits must be individually itemized on the vendor’s invoices. In the case of other applicable credits, the nature

of the credit must also be detailed on the vendor's invoice. There is no exception to this, as any type of vendor concession may be deemed a gift and therefore is not acceptable.

(7 CFR, Section 210.21[f][iv])

Summer Food Service Program Bonding Requirements (Food Services)

When contracting with a Food Service Management Company (FSMC) for a Summer Food Service Program, any bid greater than the Simplified Acquisition Threshold shall be accompanied by a Bid Bond in the amount of 5 percent of the contract price. Any contract entered into which exceeds the Simplified Acquisition Threshold shall be accompanied by a Performance Bond in the amount of 10 percent of the contract price. If there are multiple contracts with the same FSMC, and the aggregate amount of the contracts exceeds the Simplified Acquisition Threshold, the FSMC shall provide a Performance Bond in the amount of 10 percent of the aggregate contract amount. Performance Bonds must be furnished to our District from the FSMC within 10 days of contract award.

(7 CFR, Section 225.15[m][5-6])

Bid Openings for Summer Food Service Programs (Food Services)

Our District is required to notify the California Department of Education (CDE), with a minimum of 14 days advance notice, as a representative from the CDE must be present at all food service management company procurement bid openings when we are expected to receive more than \$100,000 in Program payments.

(7 CFR, Section 225.6[l][4])

Table 1 • Procurement Thresholds

Equipment, Materials (except instructional), Supplies, Goods, Services (except construction and professional), Repairs (non-public project)

The table below is a combination of both Federal and State regulations. In any case where there is a difference between the Federal and State code, the stricter of the two is adhered to. This is only meant as a quick reference. Further definitions, including exemptions, are contained in various government codes including, but not limited to, Public Contract Code 20110-20118.4.

METHOD	\$ RANGE	DESCRIPTION / PROCEDURE
Micro Purchase (Informal)	Up to \$10,000 (Federal-Micro Purchase)	Used in order to expedite the completion of our lowest-dollar transactions and minimize the associated administrative burden and cost. Considered a subset of the Small Purchase method. May be used when the annual aggregate cost of a supply or service does not exceed the threshold. Contact the Facilities Department for either of the following: Purchases which involve labor costs in excess of \$1,000 (Field Contract) (LC 1771), or any service which will alter our facility, including anchoring equipment. Purchases must be distributed equitably among “local” vendors, provided a vendor’s price is considered “reasonable.” In this case, the term “reasonable” is defined as within 15 percent of the lowest known vendor’s non-sale price for the same supply or service. For supplies, “local” is defined as vendor’s location within a 10-mile radius of our District Office. For services, “local” is defined as any known vendor whose response time is considered acceptable depending upon the situation. Detailed records should be maintained in order to show equitable distribution of funds. This requirement of equitable distribution applies only to Federal funds. (2 CFR, Section 200.320(a)(1)) (SVUSD AR 3230)
Small Purchase (Informal)	Up to \$114,500 (California) \$250,000 (Federal-Simplified Acquisition Threshold or SAT)	May be used when the annual aggregate cost does not exceed the threshold. Contact the Facilities Department for either of the following: Purchases which involve labor costs in excess of \$1,000 (Field Contract) (LC 1771), or any service which will alter our facility, including anchoring equipment. Multiple quotes are not needed for instructional materials. However, it is our duty to maximize the value of the taxpayer dollars, and therefore comparative pricing should be sought when warranted (PCC 20118.3)

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		<p>Multiple quotes are not required when using either a State, Cooperative Purchasing Group, or Piggyback contract. Required information must be referenced on our requisition. (2 CFR, Section 200.318[e]) (PCC 20118)</p> <p>A minimum of three (3) WRITTEN quotes is required on purchases exceeding \$3,500.00. For purchases not exceeding \$3,500.00, three (3) WRITTEN quotes are preferred, however, two (2) WRITTEN quotes are acceptable. When requesting quotes for equipment, materials, supplies, or goods, ALWAYS REQUEST ANY AVAILABLE GOVERNMENT PRICING via State, Cooperative Purchasing Group, or Piggyback contract. Quotes must be attached to our requisition either separately, or as one document with the winning quote beginning on page 1 (preferred). (2 CFR, Section 200.320(a)(2)) (SVUSD AR 3230)</p>
<p>Large Purchase (Formal)</p>	<p>Exceeds \$114,500 (California)</p> <p>\$250,000 (Federal-SAT)</p>	<p>Formal bidding procedures must be used when the annual aggregate cost exceeds the threshold. This includes both Sealed Bids and Requests for Proposals (RFP's). Contact the Purchasing Department.</p> <p>Requirements are outlined in legal code, including but not limited to, Public Contract Code section 20110-20118.4.</p> <p>Not required for instructional materials. (PCC 20118.3) (2 CFR, Section 200.320(b)) (PCC 20110-20118.4) (SVUSD AR 3230)</p>

Table 2 • Procurement Thresholds for Public Works

Our District is governed under the California Uniform Public Construction Cost Accounting Act (CUPCCAA), applicable to public works. The table below is only meant as a quick reference. Further definition is contained in various government codes including, but not limited to, Public Contract Code 22000-22045.

PROJECT COST	REQUIREMENTS
\$1,000 or less	<p>The following items are required:</p> <ol style="list-style-type: none"> 1. Written quote on Contractor letterhead 2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5) 3. Contractor is licensed (LAB 1725.5) 4. Contractor is insured for the following as required by District minimums: <ul style="list-style-type: none"> • Commercial General Liability including Additional Insured Endorsement • Automobile Liability • Workers' Compensation (LAB 1725.5) • Any other type of insurance as may be required <p>The above items, or their verification, must be attached to our requisition.</p>
\$1,000.01 to \$14,999.99	<p>The following items are required:</p> <ol style="list-style-type: none"> 1. Written quote on Contractor letterhead 2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5) 3. Contractor is licensed (LAB 1725.5) 4. Contractor is insured for the following as required by Field Services Contract: <ul style="list-style-type: none"> • Commercial General Liability including Additional Insured Endorsement • Automobile Liability • Workers' Compensation (LAB 1725.5) • Any other type of insurance as required by Field Services Contract 5. Field Services Contract including: <ul style="list-style-type: none"> • Prevailing Wage Certification (LAB 1771) • Fingerprint Certification, if applicable (EDC 45125.2) <p>The above items, or their verification, must be attached to our requisition.</p>

<p>\$15,000 to \$60,000</p>	<p>The following items are required:</p> <ol style="list-style-type: none"> 1. Multiple written quotes (typically three) on Contractor letterhead. Remaining requirements apply to selected quote, beginning with the lowest cost quote. 2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5) 3. Contractor is licensed (LAB 1725.5) 4. Contractor is insured for the following as required by Field Services Contract: <ul style="list-style-type: none"> • Commercial General Liability including Additional Insured Endorsement • Automobile Liability • Workers' Compensation (LAB 1725.5) • Any other type of insurance as required by Field Services Contract 5. Field Services Contract including: <ul style="list-style-type: none"> • Prevailing Wage Certification (LAB 1771) • Fingerprint Certification, if applicable (EDC 45125.2) <p>All contracts in the amount of \$10,000 or more must go to the School Board for approval/ratification.</p> <p>The above items, or their verification, must be attached to our requisition. Quotes should be attached as one document with the winning quote beginning on page 1.</p>
<p>\$60,000.01 to \$200,000</p>	<p>Informal bidding procedures as outlined in Public Contract Code section 22030-22045</p>
<p>Exceeds \$200,000</p>	<p>Formal bidding procedures as outlined in Public Contract Code section 20110-20118.4.</p>

Table 3 • Steps in Formal Bidding

The following is an example of the steps in the Formal Bidding process. The actual published dates for each step depend upon the feasible scheduling/coordination with Board meetings.

1. Bid document is created.
2. An “Invitation for Bids” is published once a week for two consecutive weeks. Bidders must be given sufficient time to respond before the published time and place of the Bid Opening.
3. If applicable, all interested bidders must attend a job walk (public works).
4. Bids are collected up to the published time of the Bid Opening and then opened at the published place of the Bid Opening.
5. A “Notice of Intent to Award” is provided to all bidders confirming the selected lowest responsive bid submitted from all responsible bidders. This begins the protest period, five working days unless otherwise specified in the bid document.
6. The selected bid is presented to the Board for approval/award.
7. A “Notice of Award” is provided to the successful bidder, along with the related contracts to be executed.
8. Depending upon the type of contract, the successful bidder is provided a “Notice to Proceed” (public works), or a Purchase Order, to begin fulfillment of the contract.

Table 4 • Websites

To check a Contractor’s License:

Contractor’s State Licensing Board

<https://www2.cslb.ca.gov/OnlineServices/CheckLicense/CheckLicense.aspx>

To check for State Debarment:

Department of Industrial Relations

<https://www.dir.ca.gov/dlse/debar.html>

To check for Federal Debarment:

General Service Administration, System for Award Management

www.sam.gov

To check for ineligibility resulting from the Iran Contracting Act:

Department of General Services

<https://www.documents.dgs.ca.gov/pd/poliproc/Iran%20Contracting%20Act%20List.pdf>

To verify that a bond is being executed by an admitted surety insurer:

[https://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line\\$.startup](https://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line$.startup)

Appendix I • Code References

Code of Federal Regulations (CFR)

2 CFR 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

2 CFR 200.214 Suspension and debarment.

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

2 CFR 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

2 CFR 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial

interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

2 CFR 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided

its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

2 CFR 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research,

experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases—(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The

following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) 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

(5) After solicitation of a number of sources, competition is determined inadequate.

2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

2 CFR 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2 CFR 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2 CFR 200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 CFR 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 CFR 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 CFR 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

2 CFR Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include

the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323 Procurement of recovered materials.

(K) See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See § 200.322 Domestic preferences for procurements.

7 CFR 210.21 Procurement

(d) Buy American

1. Definition of domestic commodity or product. In this paragraph (d), the term ‘domestic commodity or product’ means

- (i) An agricultural commodity that is produced in the United States; and
- (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

2. Requirement.

- (i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.
- (ii) Limitations. Paragraph (d)(2)(i) of this section shall apply only to
 - (A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(f) Cost reimbursable contracts

1. Required provisions. The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.

(g) Geographic preference.

1. A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

2. For the purpose of applying the optional geographic procurement preference in paragraph (g)(1) of this section, “unprocessed locally grown or locally raised agricultural products,” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

7 CFR, 225 Summer Food Service Program.

7 CFR, 225.6 State agency responsibilities.

(a) General responsibilities. 1. The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(l) Monitoring of food service management company procurements.

4. Each State agency shall have a representative present at all food service management company procurement bid openings when sponsors are expected to receive more than \$100,000 in Program payments.

7 CFR, 225.15 Management responsibilities of sponsors. (Summer Food Service Program)

(m) Food service management companies.

1. Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with §225.18.

5. Each food service management company which submits a bid exceeding the simplified acquisition threshold in 2 CFR part 200, as applicable, shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

6. Each food service management company which enters into a food service contract exceeding the small purchase threshold in 2 CFR part 200, as applicable, with a sponsor shall obtain a performance bond in an amount not less than 10 percent nor more than 25 percent of the value of the contract for which the bid is made, as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the simplified acquisition threshold in 2 CFR part 200, as applicable. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

Code of Civil Procedures (CCP)

CCP 995.311

(a) Notwithstanding any other provision of law, any bond required on a public works contract, as defined in Section 1101 of the Public Contract Code, shall be executed by an admitted surety insurer. A public agency approving the bond on a public works contract shall have a duty to verify that the bond is being executed by an admitted surety insurer.

(b) A public agency may fulfill its duty under subdivision (a) by verifying the status of the party executing the bond in one of the following ways:

1. Printing out information from the website of the Department of Insurance confirming the surety is an admitted surety insurer and attaching it to the bond.

2. Obtaining a certificate from the county clerk that confirms the surety is an admitted insurer and attaching it to the bond.

California Code of Regulations (CCR)

CCR 1406 Notice of Intent to Protest; Service List.

(a) An unsuccessful bidder who intends to protest the awarded contract pursuant to this chapter must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be not less than one working day and not more than five working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.

(b) On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those bidders who did submit a Notice of Intent to Protest, the Awardee, and the Contracting Department. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those bidders who submitted a Notice of Intent to Protest.

California Civil Code (CIV)

CIV 9550

(a) A direct contractor that is awarded a public works contract involving an expenditure in excess of \$25,000 shall, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded.

(b) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of \$25,000.

CIV 9554.

(a) A payment bond shall be in an amount not less than 100 percent of the total amount payable pursuant to the public works contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer.

California Education Code (EDC)

EDC 17076.11.

Any school district using funds allocated pursuant to this chapter for the construction or modernization of a school building, shall have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises.

EDC 17602.

The governing board of any school district may purchase from the federal government or any agency thereof any surplus property, as defined in the Surplus Property Act of 1944, in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

EDC 45125.2.

(a) A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

1. The installation of a physical barrier at the worksite to limit contact with pupils.

2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.

3. Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a school district for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 45125.1 if one or more of the methods described in subdivision (a) is utilized.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

Government Code (GOV)

GOV 1090.

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

GOV 8355.

(a) Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

2. Establishing a drug-free awareness program to inform employees about all of the following:
 - (A) The dangers of drug abuse in the workplace.

- (B) The person's or organization's policy of maintaining a drug-free workplace.
- (C) Any available drug counseling, rehabilitation, and employee assistance programs.
- (D) The penalties that may be imposed upon employees for drug abuse violations.

3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

(b) 1. The certification requirement set forth in subdivision (a) does not apply to a credit card purchase of goods of \$2,500 or less.

2. The total amount of exemption authorized herein shall not exceed \$7,500 per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

Labor Code (LAB)

LAB 1725.5.

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

1. Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of \$300 to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
2. Provide evidence, disclosures, or releases as are necessary to establish all of the following:
 - (A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation Insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
 - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of

this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

LAB 1771.

Except for public works projects of \$1,000 or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

Public Contract Code (PCC)

PCC 2203.

(a) 1. A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created pursuant to subdivision (b) as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of \$1,000,000 or more.

2. A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, engages in investment activities in Iran as described in subdivision (b) of Section 2202.5, is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of \$1,000,000 or more.

PCC 2204.

(a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of \$1,000,000 or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

(b) A public entity shall not require a person that submits a bid or proposal to, or otherwise proposes to enter into a contract with, the public entity with respect to a contract for goods or services of \$1,000,000 or more to certify that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable, if the person has been permitted to submit a bid or proposal to the public entity pursuant to subdivision (c) or (d) of Section 2203.

PCC 3400.

(a) The Legislature finds and declares that it is the intent of this section to encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that function as well, in all essential respects, as materials, products, and services that are required by a contract, but at a lower cost to taxpayers.

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works:

1. In a manner that limits the bidding, directly or indirectly, to any one specific concern, or
2. Calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

1. In order that a field-test or experiment may be made to determine the product's suitability for future use.
2. In order to match other products in use on a particular public improvement either completed or in the course of completion.
3. In order to obtain a necessary item that is only available from one source.
4. (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.
(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

PCC 3410.

Any public entity, as defined in Section 1100, including any school district or community college district, when purchasing food, shall give preference to United States-grown produce and United States-processed foods when there is a choice and it is economically feasible to do so. For purposes of this

section, the determination of “economically feasible” shall be made by the purchasing public entity, considering the total cost, quantity, and quality of the food and the budget and policies of the entity.

PCC 6610.

Notice inviting formal bids for projects by a public agency that include a requirement for any type of mandatory prebid conference, site visit, or meeting shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. This provision shall not apply to the Regents of the University of California.

PCC 7106.

Every bid on every public works contract of a public entity shall include a declaration under penalty of perjury under the laws of the State of California, in the following form:

“NON-COLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the ____ of ____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on ___[date], at ___[city], ___[state].”

PCC 12156

(a) Except as provided in subdivision (b), no state agency shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

- (1) Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.
- (2) A licensing agreement on the cartridge that forbids remanufacturing.
- (3) Any contract that forbids the remanufacturing or recycling of the cartridge.

(b) Notwithstanding subdivision (a), a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

- (1) Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.
- (2) Recycling.

(c) Each state agency shall print a statement on the cover of its printer or duplicator cartridge bid packages, or in some other noticeable place in the bid packet, notifying all bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in subdivision (b).

(d) This section does not authorize any violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(e) As used in this section, the following terms mean:

- (1) "Printer or duplication cartridge" means a cartridge, including, but not limited to, a toner or ink cartridge, used in printer or duplication equipment for business or personal use.
- (2) "Recycled" means a printer or duplication cartridge that would otherwise become solid waste, but which has undergone a process of collecting, sorting, cleansing, treating, or reconstituting, and which has been returned for the manufacture of new products or the remanufacture of used cartridges.
- (3) "Remanufactured" means a printer or duplication cartridge that has served its intended end use, but, rather than being discarded or disposed of, has instead been restored, renovated, repaired, or recharged, without substantial alteration of its form.

PCC 20111.

(a) (1) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars (\$50,000) for any of the following:

- (A) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
- (B) Services, except construction services.
- (C) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

(2) The governing board shall let the contract to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) (1) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for

construction work shall be presented under sealed cover, and shall be accompanied by one of the following forms of bidder's security:

- (A) Cash.
- (B) A cashier's check made payable to the school district.
- (C) A certified check made payable to the school district.
- (D) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

(2) Upon award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) 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.

(d) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any work done by day labor or by force account pursuant to Section 20114.

(e) Commencing January 1, 1997, the Superintendent of Public Instruction shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars (\$100).

PCC 20112.

For the purpose of securing bids, the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The governing board of the district may accept a bid that was submitted either electronically or on paper.

PCC 20118.

Notwithstanding Sections 20111 and 20112, the 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. Upon receipt of the personal property, if the property complies with the specifications set forth

in the contract, lease, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property, or the school district may make payment directly to the vendor. Alternatively, if there is an existing contract between a public corporation or agency and a vendor for the lease or purchase of the personal property, a school district may authorize the lease or purchase of personal property directly from the vendor by contract, lease, requisition, or purchase order and make payment to the vendor under the same terms that are available to the public corporation or agency under the contract.

20118.1.

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.

20118.2.

(a) Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, because products and materials of that nature are undergoing rapid technological changes, and in order to allow for the introduction of new technological changes into the operations of the school district, it is in the public's best interest to allow a school district to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services.

(b) This section applies only to a school district's procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This section does not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public.

(c) Notwithstanding Section 20118.1, a school district may, after a finding is made by the governing board that a particular procurement qualifies under subdivision (b), authorize the procurement of the product through competitive negotiation as described in subdivision (d).

(d) For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

1. A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the school district, to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
3. The school district shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

4. The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.
5. The school district shall provide reasonable procedures for the technical evaluation of the proposals received, the identification of qualified sources, and the selection for the award of the contract.
6. Award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the school district with price and all other factors considered.
7. If award is not made to the bidder whose proposal contains the lowest price, the school district shall make a finding setting forth the basis for the award.

(e) The school district, at its discretion, may reject all proposals and request new proposals.

(f) Provisions in any contract concerning utilization of small business enterprises, that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

PCC 20118.3.

The governing board of any school district may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

PCC 22150

(a) If fitness and quality are equal, each local public entity shall purchase recycled products, as defined in Section 12200, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items.

(b) A local public entity may give preference to suppliers of recycled products.

(c) A local public entity may define the amount of this preference.

PCC 22152

(a) All local public entities shall require all business, as defined in Section 12200, to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.