

ADMINISTRATIVE PROCEDURE 6340 CONTRACTS

The Chancellor directs that the following regulations apply to Contracts in the Peralta Community College District:

- I. The Vice Chancellor Finance and Administration shall have the authority to issue operating procedures and authorize standard forms for the implementation of this regulation within the limits established in the Education Code and/or other laws pertaining to the taking of bids and issuance of contracts.
- II. This regulation uses the following terms as defined below:
 - A. **Goods:** Any tangible product. Goods include, but are not limited to “off-the shelf” computer software and utilities, books, supplies, equipment, etc.
 - B. **Services:** Any deliverable resulting from labor performed specifically for the District. The service may result from the application of physical or intellectual skills. Services include, but are not limited to repair work, consulting, maintenance, data processing, custom software design or coding, etc.
 - C. **Construction:** A project that includes all the work needed to produce a complete and usable facility, or to remodel an inadequate or damaged facility. Construction includes excavation, building, installations, related infrastructure, landscaping, etc.
 - D. **Invitation to Bid (IFB):** A formal invitation to bid that is sent to prospective bidders when goods or services desired above a specific high dollar amount. An IFB is well-defined. A sealed response is required. This procedure typically takes three (3) to eight (8) weeks.
 - E. **Maintenance:** A repair of buildings, facilities, equipment, grounds and similar work. It is a repair if the result of the work is restoration to the facilities original condition. If construction is the work results in a new configuration.
 - F. **Request for Proposal (RFP):** A formal, sealed RFP is sent to prospective bidders when goods or services desired are high dollar amount, complex, and not wholly defined. A sealed response is required. This procedure typically takes three (3) to eight (8) weeks.
 - G. **Request for Quotation (RFQ):** An RFQ is used in an informal bid process for the purchase of lower dollar, well-defined goods or services. An RFQ is typically a one page form sent to the vendor. This procedure typically takes one (1) to two (2) weeks.
 - H. **Verbal, Phone, or E-Mail Quotes:** These methods are used in an informal bid process for the quick purchase of low dollar, well-defined goods or services. Documentation of vendor contacts and quotes are to be maintained. This procedure typically takes one (1) to three (3) days.
- III. **District Business Processes and Contract Types**
 - A. **Delegation of Authority to Enter Into and Amend Contracts:** When transactions do not exceed dollar limits established by statute or this regulation, the Chancellor and the Vice Chancellor Finance and Administration may:
 1. Contract for goods, services, equipment and rental of facilities as authorized by statutes in conformance with any specified limitations or requirements.
 2. Amend the terms and conditions of any contractual arrangement provided the total expenditure of funds and period of contract do not exceed the limitations set forth in

- applicable state or federal law, district policies, district regulations, and college budget allocations.
3. Agree to binding arbitration if the Chancellor should determine it is an appropriate business decision to do so in order to reconcile an outstanding issue.
 4. Contracts or contract amendments exceeding \$25,000 require prior Board of Trustees authorization before they can be executed by the Chancellor or the Vice Chancellor Finance and Administration.
 - a) In cases of great emergency, as determined by the Board of Trustees, including, but not limited to, states of emergency defined in California Government Code Section 8558 and Public Government Code Section 20654, when repair or replacements are necessary to permit the continued conduct of existing college classes or the operation of services of the District or to avoid danger to life or property, the Board of Trustees may proceed at once to replace or repair any public facility without adopting plans specifications, strain sheets, work details, or giving notice for bids to award contracts. The work may be done by day labor under the direction of the Chancellor or the Vice Chancellor General Services, by contract as allowed by law.
 - b) In the event that the Chancellor or Vice Chancellor General Services is not available at the time of the emergency, the acting Chancellor will be designated by policy BP 2440 Chancellor Succession. The power to declare a public emergency is subject to confirmation of the Board of Trustees, by four-fifths vote, at its next meeting.
 5. No other employee is authorized to enter into and amend contracts or to make an inappropriate attempt to commit district financial resources. Employees who do so are personally subject to the liability for payment and/or disciplinary action up to and including dismissal. (Education Code Sections 81655, 81656)
 6. Personnel Services Contracts of \$25,000 or less may be processed using a Independent Contractor/Consultant Services Contract without require prior Board of Trustees approval. All other contracts exceeding \$15,000 require prior Board of Trustees approval. All contracts must be ratified by the Board of Trustees if not approved in advance.
- B. **Contract Types:** Contracts are classified as continuing price, lease/rental, repair/ maintenance, personnel services, construction and income generating. District regulations for fulfilling these requirements are summarized in Table AP-6340A, District Business Processes and Contract Types below:
1. **Continuing contracts** for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired, or for materials or supplies to be furnished or sold to the District with an accepted vendor is limited by Education Code 81644 as follows:
 - a. For work, services, apparatus or equipment: not to exceed five (5) years.
 - b. For materials or supplies: not to exceed three (3) years.
 2. **Lease and Rentals Agreement (Lease-Purchase Contracts)**
 - a. The District is required by statute to comply with all applicable bid and contract provisions specified in the Educational Code (beginning with Section 81641) and by Section 20651 of the Public Contract Code (Educational Code Section 81551) prior to entering into an agreement.
 - b. Each lease-purchase "contract shall show the total price for an outright purchase of any item and its total cost for the entire specified term of the contract. (Educational Code Section 81551).

3. **Repairs / Maintenance:** The Vice Chancellor General Services, is responsible for any contracts relating to the maintenance, repair, minor alterations and improvements of District grounds, buildings, facilities, and similar work. If the repair/maintenance contract is under \$15,000 it may be executed without prior Board of Trustees approval..
4. **Personnel Services:** The Chancellor, is responsible for any contracts relating to personnel services. If the personnel services contract is under \$25,000 it may be executed without prior Board of Trustees approval.
5. **Construction and/or Improvement of Grounds (Public Works Contracts)**
 - a. **Acceptance of Completion for Material and Labor Contract:** When the entire work has been completed, as provided for in the contract and any addendums to the contract, the Chief Business Officer shall submit a recommendation for Board acceptance of the contract. After acceptance, a Notice of Completion of Contract shall be filed with the County Recorder.
 - b. **Public Works Bonds:** Material and Labor Performance Bonds shall be issued for not less than one hundred percent (100%) of the contract price by a surety or sureties satisfactory to the District and in a form prescribed by the District in which expenditures exceed \$25,000.

TABLE AR-6340A CONTRACT TYPES AND DISTRICT BUSINESS PROCESSES				
	OBJECT CODES	AMOUNT		
		LESS THAN \$25,000	\$25,000 TO \$81,000	MORE THAN \$81,000 ¹
Continuing Price Supplies and Materials	4000- 4999	<ul style="list-style-type: none"> • Requisition • Signed Contract • Board Ratification² 	<ul style="list-style-type: none"> • Requisition • “Piggyback” State or County Contracts • Board Pre-Approval 	<ul style="list-style-type: none"> • Requisition • “Piggyback” State or County Contracts • Board Pre-Approval
Lease and Rentals (Lease Purchase)	5610- 5629	<ul style="list-style-type: none"> • Requisition “Blanket” Purchase Order • Signed Contract • Board Ratification² 	<ul style="list-style-type: none"> • Requisition • Request for Proposals (RFP) • Board Pre-Approval² • Signed Contract 	<ul style="list-style-type: none"> • Requisition • Advertisement for Request for Proposals (RFP) • Board Pre-Approval² • Signed Contract
Repairs / Maintenance	5630- 5699	<ul style="list-style-type: none"> • Requisition • Facilities Order • Board Ratification² 	<ul style="list-style-type: none"> • Requisition • Bid Process • Board Pre-Approval² • Signed Contract 	<ul style="list-style-type: none"> • Requisition • Advertised Bid Process • Board Pre-Approval² • Signed Contract
Personnel Services	5130- 5133	<ul style="list-style-type: none"> • Requisition • Independent Contractor/ Consultant Services Signed Contract • Board Ratification² • OK up to \$25000 	<ul style="list-style-type: none"> • Requisition • Request for Proposals (RFP) • Contractor’s Statement of Qualifications • Board Pre-Approval² • Signed Contract 	<ul style="list-style-type: none"> • Requisition • Advertised Request for Proposals (RFP) • Contractor’s Statement of Qualifications • Board Pre-Approval² • Signed Contract
Construction and/or Improvement of Buildings and/or Grounds (Public Works)	6100- 6399	<ul style="list-style-type: none"> • Requisition • Board Ratification under \$15,000 • Board Pre-Approval over \$15,000 	<ul style="list-style-type: none"> • Requisition • Advertised Bid Process • Board Pre-Approval² • Signed Contract 	<ul style="list-style-type: none"> • Requisition • Advertised Bid Process • Board Pre-Approval² • Signed Contract
Income Generating	8000- 8999	<ul style="list-style-type: none"> • Award letter or Facilities Use Application • Board Ratification² 	<ul style="list-style-type: none"> • Award letter or Facilities Use Application • Board Pre-Approval² 	<ul style="list-style-type: none"> • Award letter or Facilities Use Application • Board Pre-Approval²

¹ Board of Governors (BOG) limit as of January 1, 2012 subject to change.

² Copy of Board Minutes to be placed in purchasing/contract file subject to audit.

6. **Income Generating** contracts may be issued when the district provides services or when the district acts as lessor other than for civic center permit activities (see AP 6700). The district is authorized to lease, or lease with option to purchase, any land, buildings, or equipment it determines is not needed for district purposes. Such leases and leases with options to purchase to nonpublic agencies or individuals shall comply with the provisions of California Educational Code Sections 81450, 81452, 81453, 81454, and 81553.
- IV. **General Requirements:** The following information identifies the some, but not all, general statutory requirements applicable to public agency contracting and procurement:
- A. Employees of the District, members of the Board of Trustees, and members of citizens' oversight committees shall not have an interest in any contract, other than their individual employment agreement, made by the Board. (Education Code 72533)
- B. In addition, state statute prohibits "offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the making of any contract to which the board of which he or she is a member is a party, or the acceptance of any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor" (Education Code 72530(a))."
- C. A contract obtained by incorrect means is void (Education Code 72530(b)).
- D. The District cannot be legally bound to any contract unless and until that contract is authorized or ratified by the Board of Trustees. All routine transactions shall be reviewed by the governing board within ninety (90) days. All emergency contracts are required to be reported to the Board of Trustees at the earliest possible date and in all circumstances within thirty (30) days after issuance (Education Code 81655 and 81656).
- E. Any employee who signs a contract in violation of law or in violation of his or her authority is subject to disciplinary action. In addition, as allowed by Education Code Section 81655, any employee committing the District to such expenditure may be personally liable to the District for any and all moneys the District paid as a result of such action. District funds incurred as a result of such actions may be charged to the location creating the liability.
- F. "In the event of malfeasance in office, the community college district officer or employee invested by the governing board with the power to contract shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance" (EC 81656).
- G. **Adjustments to Contract Amounts:** The California Community Colleges Board of Governors may make adjustments to the public project contract amounts shown in Table AR-6340A, Contract Types and District Business Processes, above. Any such adjustment shall be effective beginning with the calendar year that commences not less than sixty (60) calendar days following the Board of Governors notification to the District and posted in this regulation.
- H. **Approved Vendor List:** The Vice Chancellor Finance and Administration shall ensure an approved vendor list is maintained and ensure that bids are solicited from minorities, women, and disabled veteran as specified by statute. Upon conclusion of the bid or proposal process, the District may contract with the party who submitted one of the three lowest responsible competitive proposals or competitive bids. No vendor can be placed on the approved vendor list until the following are submitted:
- Complete Vendor Identification including name, address, and phone number.
 - Statement of qualifications.
 - Tax payer identification number as required by the Internal Revenue Services (IRS).

- “Affirmative Action Status Form”.

I. **Contractual Elements and Requirements**

1. An appropriate budget-line for the contract along with adequate funding to encumber the contract must be developed before a contract is submitted for processing. Adequate funding includes both an “unencumbered balance” in the line item and sufficient cash reserves in the fund to pay subsequent invoices within thirty days of receipt. The CBO shall notify all managers of the college if insufficient cash is available to pay invoices. When inadequate funding exists to encumber the entire cost of the contract, it is permitted to submit a partially encumbered contract which amount shall have a specified limited “work authorization” scope of work and dollar amount. Such contracts shall contain language that completion of the contract is subject to a determination by the district to issue subsequent “work authorizations”.
 2. Each contract is required to “show the total price for the outright purchase of any item” and “its total cost for the entire specified term of the contract “(EC 81551). Price for an item can be stated in terms of price/hour for a particular job classification.
 3. Once a contract is signed by all parties, the document constitutes a legal and binding agreement. Any changes to the contract shall be made in writing as contract addendum signed by both parties.
 4. **Non-Discrimination Certification:** Any contractor performing work or performing services for the District must certify that:
 - a. There is no discrimination in the contractor’s hiring or employment practices because of sex, race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, or sexual orientation, except as provided for in Government Code Section 12940.
 - b. All contractor’s must agree to comply with applicable federal and California anti-discrimination laws, including but not limited to the California Fair employment Housing Action beginning with California Government Code Section 12900.
 - c. In addition, the contractor must agree to require compliance by all subcontractor’s employed on the work by him/her.
 5. **Payment of Prevailing Wages:** Contractors are required to certify compliance with California Labor Code Sections 1775 and 1776 governing payment of prevailing wages.
 6. **Employed Apprentices:** When working for the District, contractors and their subcontractors who employ workers in any craft or trade apprentices, and who refer apprentices to the District for enrollment, are subject to the provisions of the California Apprenticeship Law, California Plan in Apprenticeship, and the Equal Employment Opportunity Action Plan adopted by the Board of Trustees.
 7. **Discriminatory Trusts and Restraints of Trade:** Contractors are required to abide by California Business and Professions Code Sections 16721 and 16721.5 pertaining to unlawful discrimination in commercial transactions and unlawful restraints of trade (Education Code 81641).
- V. **Competitive Bidding:** Contracts are subject to the bid limits found in California Public Contract Code Section 20651. Specific transactions may have additional statutory requirements. Table AR-

6341, Contract Limits and Requirements, below, summarizes statutory requirements and identifies the corresponding District process.

- A. **Bid Threshold Limit:** The California Community College Board of Governors (BOG) establishes bid threshold limit as authorized by statute (Public Contract Code Sections 20111 and 20651). The threshold limit is adjusted annually (by calendar year) and impacts the following types of contracts:
1. Purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
 2. Services, except construction services.
 3. Repairs, including maintenance as defined in Public Contract Code 20115, that are not a public project as defined in Public Contract Code 2202.
- B. **Bid and Contract Forms:** The Vice Chancellor Finance and Administration shall ensure that bid and contract forms are prepared for the District. In addition, the Vice Chancellor shall ensure that a file of all completed forms is maintained and that all applicable statutory provisions, Board Policies, and Administrative Procedures are observed in the preparation of the forms.
- C. **Bid Specifications:** The Vice Chancellor Finance and Administration shall ensure that bid specifications are sufficiently broad to encourage and promote open competitive bidding.
- D. **Advertisement for Bids:** The Vice Chancellor Finance and Administration shall ensure that bids are advertised when required by the provisions of Educational Code Section 81641 and other applicable statutes.
- E. **Bid Guarantees:** When required or appropriate, bids shall be accompanied by a certified or cashier's check, or bid bond, in the amount specified in the bid form, as a guarantee the bidder will enter into contract and furnish the required contract bonds. When no longer required for protection of the District, any certified or cashier's check received shall be returned to the respective bidder.
- F. **Distribution and Examination of Bid Documents:** The Vice Chancellor General Services:
1. Shall ensure "Bid forms" along with applicable sets of specifications and drawings are made available to prospective bidders.
 2. Shall provide a convenient place for bidders, subcontractors, and material personnel use to examine specifications and drawings.
 3. May require a deposit for sets of plans and specifications and may refund the deposit when the documents are returned.
 4. May schedule a bidder's conference and/or job site walk through to clarify specifications.
- G. **Receipt of Bids**
1. The Vice Chancellor Finance and Administration shall receive the bids and ensure bids are opened and read aloud in public at the time and place specified in the bid, shall check the bids for regularity and compliance with legal requirements, and record them (Education Code Section 81641).
 2. **Receipt of Bids over the Internet:** Bids may be submitted by way of electronic transmission.

H. **Responsive Bids**

1. An award shall be made to the lowest responsive bidder who meets District specifications and requirements in conformance with the law.
2. Failure to provide required documentation shall cause any bid to be deemed incomplete and/or nonresponsive.

I. **Rejection of Bids:** Any and all bids may be rejected by the District for good and sufficient reason. Such rejection shall be in writing.

J. **Contract Splitting:** California Public Contract Code 20657 prohibits splitting or separating "into smaller work orders or projects any work, project, service, or purchase" into smaller work orders, contract, or purchase for the purpose of avoiding competitive bidding. A project may, however, be split into several trade-oriented contracts in order to keep project costs low. In such instance, the competitive bidding requirement must be met by going to bid for each of the various trade categories.

- Example: Equipment can be purchased from one vendor and a contract can be issued to another vendor for the equipment's installation. If the total cost is above the \$81,000 bid threshold, the project must be competitively bid. (Public Contract Code Sections 20116, 20118, 20652, and 20657).

K. **Alternate Procedure:** California Uniform Public Construction Cost Accounting Act (CUPCCA) allows community college districts who accept uniform construction standards to raise bid thresholds. To do so, an approval through the state is required. This ability is not applicable to Peralta Community College District at this time because the District has not applied for CUPCCA authority.

L. **Prequalification of Bidders:** As allowed by Public Contract Code Section 10651.5, prospective bidders for a contract or classification of contracts described in Public Contract Section 20651, of a particular type and/or having an estimated cost to the District (either individually, or in the aggregate during the twelve (12) month period of prequalification provided below in excess of \$1,000,000.00, may be required by the District to furnish sufficient proof of public works experience and financial ability by completing a standard form questionnaire and financial information.

1. Applicants for prequalification shall provide answers to questions using a District standard form of questionnaire and financial statement that is based on the prequalification forms (either the long form or short form, as deemed appropriate. When completed, the questionnaire and financial information shall be verified under oath in the manner in which pleadings in civil actions are verified.
2. Applicant responses to the District's standard questionnaire shall be evaluated and selected applicants will be prequalified according to a uniform system of scoring that is based on the form of scoring sheet.
3. Except as otherwise provided by applicable laws, the questionnaires and financial information are not public records and shall not be open to public inspection.
4. A determination by the District prequalifying an applicant shall not be construed a representation on the part of the District that any bids or proposals will be invited or solicited from an applicant or that a contract will be advertised, offered, bid or awarded only to prequalified applicants.

5. A determination that an applicant is prequalified shall, unless otherwise cancelled, revoked, or limited by the District, remain valid for a period of twelve (12) months after the date that the applicant was prequalified. At that point in time, the District may either allow the prequalification status of the applicant to expire of its own force or the District may, at its discretion and based on submission of updated or new information by the applicant, either renew the applicant's prequalification status for another twelve (12) months or conduct a new prequalification process.
 6. Applicants wishing to dispute the results of a prequalification determination by the District shall be entitled, prior to the closing time for receipt of bids for the contract for which they have been prequalified (or, in the case of prequalification for a classification of contracts, prior to the closing time for receipt of bids for the first contract bid by District within such classification) to a process of appeal before a committee appointed by the President of the Board of Trustees.
- VI. The Vice Chancellor General Services, in cooperation with the designated district planning structures, and the approval of the Chancellor, is authorized to perform the following activities in preparation for facilities capital improvement contracts:
- A. **Performance of Work by District Personnel:** The Vice Chancellor General Services is authorized to plan for the use of day labor or force account personnel to perform District-approved alterations, new construction, or additions for buildings and grounds and related equipment so long as the labor time or cost expenditures do not exceed the limitations of the Education Code or College budget.
 - B. **Facilities:** The Vice Chancellor General Services shall be responsible for the planning and programming of new construction, alterations and repairs of existing plants, and leasing of facilities which require State approval. This responsibility includes the planning and programming of college-initiated new construction, additions to existing plants, and major alterations of buildings and grounds.
 - C. **Drawings and Specifications:** The Vice Chancellor General Services is responsible for preparation of drawings and specifications for new buildings, leased facilities, additions, major alterations and improvements of buildings and grounds together with estimates of costs.
 1. Preliminary Drawings shall cover all proposed facilities, together with construction cost estimates, shall be submitted to the Board of Trustees for approval and authorization to proceed with the Working Drawings and Specifications.
 2. Working Drawings shall be prepared showing specifications and revised cost estimates, if any, will be submitted for approval to the State Chancellor's Office and the State Department of General Services as required by statute. Such drawings are to be submitted in the name of the Board of Trustees.
 3. Final Drawings and Specifications approved by the State Department of General Services and the State Chancellor's Office, along with revised estimates, if any, shall then be submitted to the board of Trustees for adoption (Education Code Section 81837).
 - D. **Facilities Contracts:** The Vice Chancellor General Services may initiate draft language for facilities capital outlay contracts. Contracts or contract amendments exceeding \$15,000 require prior Board of Trustees authorization before they can be executed by the Chancellor or the Vice Chancellor Finance and Administration. No vendor may be authorized to do any work until the contract is executed by the Chancellor or the Vice Chancellor Finance and Administration.
- VII. **Minor Contracts:** Work involving an expenditure amount that requires competitive bidding shall be awarded as described in the Competitive Bidding Section, above. The Vice Chancellor Finance and

Administration is authorized to execute minor contracts without a requirement for bidding if the construction, or maintenance activities do not exceed \$15,000.

Reference:

Title 5 Section 55007

Board Policy and Administrative Procedure 6600 Capital Construction

Approved by the Chancellor: February 22, 2013