



**Merced Union High School District**

# **Procurement Manual**

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

## 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 Purchasing Office at MUHSD 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])
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 use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.”
5. To complement Board Policy (BP) 3310 and Administrative Regulation (AR) 3310.

## 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 (DGS). 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 (OAC) 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 most locations do not appear to be within a reasonable distance from the District, the program does not appear to be highly 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 individual with budgetary authority, Purchasing Department, Fiscal Services, and finally reviewed and signed by the Director of Fiscal Services, the Associate Superintendent of Business Services (CBO), 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 Quintessential Schools System 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 one month 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, each site maintains a central kitchen facility, ordering frozen and fresh food products, paper goods, and dairy items. The site kitchens receive dairy products, paper goods, fresh and frozen items as ordered on a weekly basis. Each individual school site orders their own dairy and paper goods. Many frozen goods and other commodity items are located at the districts' central warehouse and are order on a weekly basis for delivery to the sites kitchen.

Orders are received by the Director of Nutritional Services, who processes the orders using various ordering software programs. The Director Nutritional Services or Assistant Director of Nutritional Services approves the orders and then they are sent to the vendors.

On the last working day of the month, the central kitchen and the central warehouse do an inventory of all products on hand.

The Assistant Director of Nutritional Services puts the monthly inventory into the Mosaic software program, which is also the program that is used to support accounts payables.

(2 CFR, Section 200.318[d])

### **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 TCPN).
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[a]) (GOV 1090)

### **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[f]) (PCC 3400)

### **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 200.323)

### **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 Merced Sun 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 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[2]) (PCC 20112)

### **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[c][1]) (PCC 3400[b])

## 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[a][6] & [c][1])

## 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 Merced Union High 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. (2 CFR, Section 200.319[c][2]) (PCC 20118.2)

### **Bonding Requirements**

For construction or facility improvement (public works) contracts, or subcontracts which exceed the CUPCCAA threshold of \$45,000, 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 fulfillment of the contractor’s obligations.

A direct contractor awarded a contract greater than \$45,000 is required to provide a Performance Bond for 100 percent of the contract price, assuring payment to all persons supplying labor and materials.

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

(2 CFR, Section 200.325) (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 involving Formal Purchase Procedures 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). (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 the District must include a provision requiring contractors 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. (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 District 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, whereby each contractor is 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. (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 sub-recipient wishes to enter into a contract with a small business firm or non-profit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Non-profit 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 sub grants of amounts in excess of \$150,000 must contain a provision that requires the -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). Aggregate contract awards of \$25,000 or more (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM). (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. (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])

#### 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.

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](http://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 200.213) (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.

Any Notice of Intent to Protest must be in writing, and must reach the designated individual outlined in the solicitation within the number of days specified within the solicitation.

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

### **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”. 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 approval.
- Shipments related to Nutrition 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 Accounting Tech 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 administration. No vendor invoice is paid until acceptable performance has been verified by our M&O Department.
- Each of our Bond public projects is followed by the Director of Facilities. Prior to the payment of any contractor’s invoice, the work is verified by the Director of Facilities. The Director of Facilities must sign the contractor’s invoice prior to payment.

(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 in 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])

## **Geographic Preference (Nutrition Services)**

Our Nutrition 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.

Our District is just beginning to apply a geographical preference.  
(7 CFR, Section 210.21[g]) (USDA SP 03-2013)

## **Buy American (Nutrition Services)**

Our Nutrition Services Department, as a 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 nutrition 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 (Nutrition Services)**

When contracting with a Food Service Management Company (FSMC) for a Summer Food Service Program, any bid greater than \$100,000 shall be accompanied by a Bid Bond in the amount of 5 percent

of the contract price. Any contract entered into which exceeds \$100,000 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 \$100,000, 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[h][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 \$500	<p>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.</p> <p>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.</p> <p>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 5 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 Merced County. 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))</p>
Small Purchase (Informal)	Up to \$88,300	<p>May be used when the annual aggregate cost does not exceed the threshold.</p> <p>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.</p> <p>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)</p>

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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(b))</p>
<p>Large Purchase (Formal)</p>	<p>Exceeds \$88,300</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(c)(d)) (PCC 20110-20118.4)</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"> <li>1. Written quote on Contractor letterhead</li> <li>2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5)</li> <li>3. Contractor is licensed (LAB 1725.5)</li> <li>4. Contractor is insured for the following as required by District minimums:                             <ul style="list-style-type: none"> <li>• Commercial General Liability including <b>Additional Insured Endorsement</b></li> <li>• Automobile Liability</li> <li>• Workers' Compensation (LAB 1725.5)</li> <li>• Any other type of insurance as may be required</li> </ul> </li> </ol> <p>The above items, or their verification, must be attached to our requisition.</p>
\$1,000.01 to \$4,999.99	<p>The following items are required:</p> <ol style="list-style-type: none"> <li>1. Written quote on Contractor letterhead</li> <li>2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5)</li> <li>3. Contractor is licensed (LAB 1725.5)</li> <li>4. Contractor is insured for the following as required by <b>Field Services Contract</b>:                             <ul style="list-style-type: none"> <li>• Commercial General Liability including Additional Insured Endorsement</li> <li>• Automobile Liability</li> <li>• Workers' Compensation (LAB 1725.5)</li> <li>• Any other type of insurance as required by Field Services Contract</li> </ul> </li> <li>5. <b>Field Services Contract</b> including:                             <ul style="list-style-type: none"> <li>• Prevailing Wage Certification (LAB 1771)</li> <li>• Fingerprint Certification, if applicable (EDC 45125.2)</li> </ul> </li> </ol> <p>The above items, or their verification, must be attached to our requisition.</p>

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<p>\$5,000 to \$45,000</p>	<p>The following items are required:</p> <ol style="list-style-type: none"> <li>1. <b>Multiple written quotes</b> (typically three) on Contractor letterhead. Remaining requirements apply to selected quote, beginning with the lowest cost quote.</li> <li>2. Contractor is registered with the Department of Industrial Relations (DIR) (LAB 1725.5)</li> <li>3. Contractor is licensed (LAB 1725.5)</li> <li>4. Contractor is insured for the following as required by Field Services Contract:             <ul style="list-style-type: none"> <li>• Commercial General Liability including Additional Insured Endorsement</li> <li>• Automobile Liability</li> <li>• Workers' Compensation (LAB 1725.5)</li> <li>• Any other type of insurance as required by Field Services Contract</li> </ul> </li> <li>5. Field Services Contract including:             <ul style="list-style-type: none"> <li>• Prevailing Wage Certification (LAB 1771)</li> <li>• Fingerprint Certification, if applicable (EDC 45125.2)</li> </ul> </li> </ol> <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>\$45,000.01 to \$175,000</p>	<p>Informal bidding procedures as outlined in Public Contract Code section 22030-22045</p>
<p>Exceeds \$175,000</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, not to be more than 5 working days.
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](http://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 200.213 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. These regulations restrict awards, sub-awards, 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 200.318 General procurement standards.**

(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.

(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.

(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.

(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.

(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 must be conducted in a manner providing full and open competition consistent with the standards of this section. 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. Non-competitive pricing practices between firms or between affiliated companies.
4. Non-competitive 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.
7. Any arbitrary action in the procurement process.

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

**2 CFR 200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). 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 bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

1. In order for sealed bidding to be feasible, the following conditions should be present:
  - (i) A complete, adequate, and realistic specification or purchase description is available.
  - (ii) Two or more responsible bidders are willing and able to compete effectively for the business.
  - (iii) 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.
  
2. If sealed bids are used, the following requirements apply:
  - (i) Bids must be solicited from an adequate number of known suppliers, 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 publically advertised.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.
  - (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
  
2. Proposals must be solicited from an adequate number of qualified sources.
  
3. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
  
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
  
5. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor 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 are a potential source to perform the proposed effort.

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.
4. 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 business, 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.
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**2 CFR 200.325 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 obligations 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 200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

## **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.

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

(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 government-wide 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.

**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.

(h) 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 over \$100,000 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 for over \$100,000 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, as determined by the State agency, of the value of the contract for which the bid is made. 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 \$100,000. 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 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 20111.**

(a) 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 \$50,000 for any of the following:

1. The 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 Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

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

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of \$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:

1. Cash.
2. A cashier's check made payable to the school district.

3. A certified check made payable to the school district.

4. A bidder's bond executed by an admitted surety insurer, made payable to the school district. Upon an 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) 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.

(d) 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 \$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.