

**School Financial Services
Commercial Claims Processing
List of Common Government Purchasing Legal Requirements**

A. Bidding Requirements

1. Public Contract Code (PCC) 20111(a) requires school districts to let any contracts involving an expenditure of more than \$50,000 for -
 - a. purchase of equipment, materials, supplies
 - b. services, except for construction
 - c. repairs that are not public projects
2. PCC 20111 (b) requires school districts to let any public projects involving an expenditure of \$15,000 or more to the lowest responsible bidder.
3. PCC 20116 makes it unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the competitive bidding requirement.
4. *PCC 20111.6 This section shall apply only to public projects, as defined in subdivision (c) of Section 22002 that involve a projected expenditure of one million dollars (\$1,000,000) or more. If the governing board of the district enters into a contract meeting the criteria, then the governing board of the district shall require that prospective bidders for a construction contract complete and submit to the board of the district a standardized prequalification questionnaire and financial statement. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.
This section shall not apply to a school district with an average daily attendance of less than 2,500.*
5. PCC 20112 and EC 81641 require the governing board of a school district or community college district to advertise at least once a week for two weeks in a newspaper of general circulation published in the district, or if there is no such paper, then in a newspaper of general circulation in the county.
6. Government Code Section 6066 provides that publication for once a week for two weeks means two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates, not counting such publication dates, is sufficient. The advertisement must state the work to be done, the materials and supplies required from the contractor, and the day and time the bids are due. The advertisement must also state the time and place where the bids will be opened and read to the public. While the bid is not required to be opened exactly at the time specified, bids may not be received after that time.

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B. Exceptions to Competitive Bidding

1. Professional service

The bidding and advertising requirements do 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 PCC 20114.

Government Code 53060- The governing board may contract with and employ any persons for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters.

2. Emergency – PCC 20113

In an emergency when any repairs, alterations, work, or improvements is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, may:

- (a) Make a contract for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.
- (b) Authorize the use of day labor or force account

3. Piggyback PCC 20118

a. If the governing board has **determined it to be in the best interest 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.

b. Electronic data-processing systems

PCC 20118.1 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. The governing board of any school district may contract with one *of the three* lowest

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responsible bidders for the procurement or maintenance, or both, of electronic data-processing systems and supporting software.

c. Instructional supplies 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 without taking estimates or advertising for bids

d. Change order PCC 20118.4

The board may authorize the contractor to proceed with performance **of the change or** alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

- The amount specified in PCC 20111 or 20114, whichever is applicable to the original contract, or
- Ten percent of the original contract price.

4. Energy conservation contracts GC 4217.10 thru 4217.6

School districts may request proposals from qualified persons for energy conservation contracts.

After evaluating the proposals, the public agency may award the contract on the basis of the experience of the local contractor, the type of technology, the cost, and any other relevant considerations.

5. Food

Perishable *foodstuffs* and seasonal commodities needed in the operation of cafeterias may be purchased by the school district. However, if the food purchase is for a year's supply, then the contract has to be let to the lowest bidder.

6. Lease / Lease-Back – EC 17406

The governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

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7. Purchase of Supplies through DGS

The governing board of any school district may purchase materials, equipment or supplies through the Department of General Services.

8. Purchase of Surplus Property from Federal Agencies

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.

9. Sole source – legal opinion

There is legal opinion to support awarding contract without competitive bidding when there is sole source. A board resolution declaring it such is required for payment.

10. Waste Management – PRC 40059

The governing board of any district or local agency may elect to contract for waste management services with or without competitive bidding

11. Uniform Public Construction Cost Accounting

A public agency which has, by resolution, elected to become subject to the Uniform Public Construction Cost Accounting set forth beginning with PCC Section 22010, may utilize the bidding procedures set forth beginning PCC Section 22032.

C. Bonding Requirements

1. Public Contract Code sections 20111 and 20651 state that all bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bid security:
 - a. Cash,
 - b. A cashier's check made payable to the district
 - c. A certified check made payable to the district
 - d. 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 district beyond 60 days from the time the award is made.

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The purpose of a bid security is to guarantee that the successful bidder signs the contract after being awarded the bid. The bidder forfeits the bid security if the bidder falls to execute the contract. Bids for materials and supplies may require bid security at the discretion of the district.

2. Payment Bond for Public Works – Civil Code 9550

Every original contractor to whom is awarded a contract by a public entity involving expenditure in excess of \$25,000 for any public work shall, before entering upon the performance of the work, file a payment bond with and approved by the officer or public entity by whom the contract was awarded. The payment bond is for materials and labors, not services performed.

A *direct* contractor who fails to file a payment bond with the district cannot be paid even when the job is completed satisfactorily and all claims for labor and materials have been satisfied. (CC 9552)

D. Stop Payment Notice

“Stop payment notice” means a written notice, signed and verified by the claimant or his agent stating in general terms all of the following:

- The kind of labor, services, equipment, or materials furnished or agreed to be furnished by such claimant;
- The name of the person to or for whom the same was done or furnished
- The amount in value, as near as may be , of that already done or furnished and of the whole agreed to be done or furnished

Application and release of Stop *Payment* Notice

Upon receipt of a Stop *Payment* Notice, it is the duty of the public entity to withhold from the *direct* contractor, or from any person acting in his behalf, an amount sufficient to answer the claim stated in the Stop *Payment* Notice and a reasonable cost of possible litigation. It is customary for school districts to withhold 125% of the Stop *Payment* Notice amount at the time a payment to a *direct* contractor.

Likewise, when a Release of Stop *Payment* Notice is received, the amount withheld previously will be refunded in the next payment due to the contractor.

Surety Bond – CC 9364

If the *direct* contractor or subcontractor disputes the correctness, validity, or enforceability of any stop payment notice, the public entity may, in its discretion, permit the *direct* contractor to file a bond executed by a corporate surety at 125% of the claim plus cost of suit in the action.

Upon filing of the bond, the public entity shall not withhold any money from the *direct* contractor on account of the *Stop Payment* Notice.

E. Retention

PCC 9203 requires districts to retain a minimum of 5% of the completed project to date on any progress payment as well as withhold not less than 5% of the contract price until final completion and acceptance of a project which will exceed a total of \$5,000.00 when it involves construction, creation, alteration, repair or improvement of a public work.

F. Notice of Completion

Pursuant to Civil Code 9204, a notice of completion shall be recorded in the county recorder's office within 15 days after completion. Final payment is made after 35 days to provide a grace period for any stop payment notices to be filed.