

ADMINISTRATIVE REGULATION 6340

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

BUSINESS AND FISCAL AFFAIRS

PURCHASING, CONTRACTS, AND BIDS

I. PURCHASING AND CONTRACTING

The District has established a centralized Procurement Department through which all required contracts for goods and services and all requests for purchases using District funds shall be routed for approval and processing.

The Procurement Department shall comply with all applicable laws and regulations, federal and state statutes, administrative codes, court decisions, legal opinions, policies of the Board, and Board-approved agreements when conducting purchasing and contracting activities on behalf of the District and shall adhere to generally-accepted purchasing standards, principles, and practices in ensuring that a competitive environment exists. A competitive environment requires that, at a certain price threshold, informal or formal quotes, Request for Proposal (RFP), informal bids, or formal bids be issued to an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement.

Purchase Orders and Contracts involving expenditures that are in excess of the limits specified in Board Policy (BP) 2430 – *Delegation of Authority to the Chancellor* shall require prior approval by the Board.

Procurement of materials, supplies, equipment, or services shall not be made from any employee of the District unless all requirements under Administrative Regulation (AR) 2712 – *Conflict of Interest Code* have been met.

The purchasing power of the District shall not be used to procure or to secure advantage in the purchase of any goods and services for employees, officers, or any other individuals.

While recognizing that individual preferences have a high value to those requesting goods and services, nevertheless, the Procurement Department has a duty to seek opportunities to standardize on items when there are significant benefits in cost, quality, value, or maintenance.

When feasible, the Procurement Department will develop more than one source of supply to encourage competition, avoid charges of favoritism, and ensure timely deliveries.

The objectives of the Procurement Department include, but are not limited to the following:

A. Procure the proper product for the purpose required;

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- B. Have the product available when needed;
- C. Procure in quantities appropriate for the rate of use;
- D. Pay the lowest price obtainable for the quantity required; and
- E. Procure without favor or prejudice while considering the factors of quality and service, in addition to price.

II. NON-DISCRIMINATION

The District shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, District contracts and shall also ensure that discrimination on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, does not occur in the award and performance of contracts.

III. BUSINESS DIVERSITY

The District is committed to increasing the participation of Minority-Owned Business Enterprises (MBE), Women-Owned Enterprises (WBE), and Disabled-Veteran-Owned Enterprises (DVBE) in the procurement activities of the District.

IV. LIMITS

Quotations (formal or informal) or bids shall be secured as necessary to obtain the lowest possible prices using the following guidelines:

Supplies, Materials, Equipment, Apparatus, and Services

- A. If a contemplated expenditure is less than \$15,000, a reasonable effort should be made to obtain three quotes in writing.
- B. If a contemplated expenditure is between \$15,000 and the formal bid limit as specified in Public Contract Code Sections 20651, et seq., at least three written quotes must be obtained unless special circumstances exist as determined by the Executive Director of Procurement, Central Services, and Risk Management.
- C. If a contemplated expenditure exceeds the formal bid limits as specified in Public Contract Code Sections 20651, et seq., the competitive bidding process must be utilized.

Information Technology Related Goods and Services

- A. If a contemplated expenditure is \$75,000 or less, or if the services are deemed professional services exempt under Government Code Section 53060, a reasonable effort must be made to obtain one quote in writing.
- B. If a contemplated expenditure is above \$75,000 and less than the formal bid limit as specified in Public Contract Code Sections 20651, et seq., at least three written quotes must be obtained unless special circumstances exist as determined by the Executive Director of Procurement, Central Services, and Risk Management.

Public Works and Maintenance Projects

Public Contract Code Section 1101 defines "Public Works Contract" as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

- A. If a contemplated expenditure is less than \$25,000 for work to be done, at least one quote must be obtained in writing.
- B. If a contemplated expenditure is between \$25,000 and \$75,000, at least three written quotes must be obtained unless special circumstances exist as determined by the Executive Director of Procurement, Central Services, and Risk Management. These amounts will be adjusted per amendments to Public Contract Code Section 22000 for public works contracts subject to California Uniform Public Construction Cost Accounting Act (CUPCCAA).
- C. If the contemplated expenditure exceeds \$75,000, the competitive bidding process must be utilized. Refer to AR 6345 – *Bids and Contracts Utilizing CUPCCAA* for the informal bid process for expenditures above \$75,000 and up to \$220,000. For expenditures over \$220,000, the formal bid process must be followed. These amounts will be adjusted per amendments to Public Contract Code Section 22000 for public works contracts subject to CUPCCAA.

Facilities Related Professional Services

- A. If a contemplated expenditure is \$75,000 or less, at least one quote must be obtained in writing.
- B. If a contemplated expenditure is above \$75,000 and less than the formal bid limit as specified in Public Contract Code Sections 20651, et seq., at least three written quotes must be obtained unless special circumstances exist as determined by the Executive Director of Procurement, Central Services, and Risk Management.

V. COMPETITIVE BIDDING PROCESS

The competitive bidding requirements and exceptions are contained in Public Contract Code Sections 20111-20651. The following is a general outline of those requirements, exceptions, and alternatives. Refer to AR 6345 – *Bids and Contracts Utilizing CUPCCAA* for the informal bid process for public works projects.

Bid Specifications

The District shall prepare bid specifications that include a definite, complete statement of what is required and, insofar as practicable, shall include pertinent details of size, composition, construction, and/or texture of what is specified, and minimum standards of efficiency, durability, and/or utility required of what is specified. Additionally, when the use of a skilled and trained workforce to complete a contract or project is required, the bid documents and construction contracts shall state that the project is subject to the skilled and trained workforce requirement.

No specifications shall be called out 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.

Further, if certain products, brands, and services have been determined by the District to have standards for which no equal would be allowed due to standardization and compatibility with existing District systems, then the District will adopt resolutions per Public Contract Code Section 20304 specifying such products, brands, and services that can be called out in bid specifications by specific brand or trade name without using the words "or equal". Such resolutions will be effective until a revision is made and then will be evaluated by the Vice Chancellor, Business Services and a recommendation will be made to the Board to either re-adopt or discontinue the use of the designated products/brands.

Notice Calling for Formal Advertised Bids

The District shall publish at least once a week for two weeks in a newspaper of general circulation within the District's service area, or if there is no such paper, then in some newspaper of general circulation within the county, and post on the District's website or through an electronic portal, a notice calling for bids or proposals, stating the materials, supplies, equipment, or services to be furnished and the time and place when the bids will be opened. The District may accept a bid that was submitted either electronically or on paper.

Whether or not bids or proposals are opened exactly at the time fixed in the public notice for opening bids or proposals, a bid or proposal shall not be received after that time.

Bid and contract forms shall be prepared and maintained by the Executive Director of Procurement, Central Services, and Risk Management or designee. All applicable statutory provisions and Board Policies shall be observed in preparation of the forms.

The Executive Director of Procurement, Central Services, and Risk Management or designee shall be responsible for ensuring that the bid specifications are sufficiently broad to encourage and promote open competitive bidding.

All bid notices for work to be done shall contain an affirmative statement requiring compliance with Labor Code Sections 1775 and 1776 governing payment of prevailing wages and Labor Code Section 1777.5 governing employment of apprentices. All bid submissions shall contain all documents necessary to ensure compliance with these California Labor Code Sections. Failure to provide such documentation shall cause any such bid to be deemed incomplete.

When required or determined to be appropriate, bids shall be accompanied by a certified or cashier's check, or bid bond, in the amount specified in the bid form in the amount of 10 percent of the total bid amount, as a guarantee that the bidder will enter into a contract and furnish the required contract documents. When no longer required for the protection of the District, any bidder's security received shall be returned to the respective bidder.

The Executive Director of Procurement, Central Services, and Risk Management shall make available electronically, at no cost to the prospective bidders, bid forms with sets of specifications and drawings and shall provide a convenient place where bidders, subcontractors, and material personnel may examine the specifications and drawings.

A deposit for sets of plans and specifications may be required and may be refunded when such documents are returned.

Pre-Qualification of Bidders

If the Vice Chancellor, Business Services or the Executive Director of Procurement, Central Services, and Risk Management concludes that the best interests of the District will be served by pre-qualification of bidders, pre-qualification may be conducted in accordance with procedures that provide for a uniform system of rating on the basis of a questionnaire and financial statements.

Awarding of Bids and Contracts

The awarding of bids and contracts shall be subject to the following conditions:

- The District reserves the right to reject any and all bids and/or contract proposals.
- All formal, sealed bids shall be opened publicly and the bidder shall be given the opportunity to make record of the bids received.
- The recommended bid and contract award shall be submitted to the Board showing a tabulation of the bids received in reasonable detail.
- The successful bidder may be notified of the contract award pending Board approval. Work shall not begin nor services provided, however, until Board approval is obtained.
- Selection and Award to Lowest Responsive, Responsible Bidder:
 - Bid and contract awards shall be made to the lowest responsive, responsible bidder meeting all of the terms, conditions, and specifications.
- Selection and Award Based on Best Value:
 - For the purposes of bid evaluation and selection when the District determines that it can expect long-term savings through the use of more sustainable goods and materials, and reduced administrative costs, the District may provide for the selection of the lowest responsive and responsible bidder on the basis of best value pursuant to policies and procedures adopted by the Board in accordance with this section.
 - “Best Value” means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the Board, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life cycle costs, overall sustainability, and required services.
 - The District will consider all of the following in a best value selection and award:

- Price and service level proposals that reduce the District's overall operating costs, including end-of-life expenditures and impact;
 - Equipment, services, supplies, and materials standards that support the District's strategic acquisition and management program direction; and
 - A procedure for protest and resolution in the request for proposal.
- The District may also consider any of the following in a best value selection and award:
 - The total cost of its purchase, use, and consumption of equipment, supplies, and materials;
 - The operational cost or benefit incurred by the District;
 - The added value to the District, as defined in the request for proposal, of vendor-added services;
 - The quality and effectiveness of equipment, supplies, materials, and services;
 - The reliability of delivery and installation schedules;
 - The terms and conditions of product warranties and vendor guarantees;
 - The financial stability of the vendor;
 - The vendor's quality assurance program;
 - The vendor's experience with the provisions of equipment, supplies, materials, and services within the institutional marketplace;
 - The consistency of the vendor's proposed equipment, supplies, materials, and services with the District's overall supplies and materials procurement program;
 - The economic benefits to the local community, including, but not limited to, job creation and retention; and
 - The environmental benefits to the local community.
 - The District will award a contract to the lowest responsible bidder, whose proposal offers the best value to the District based solely on the criteria set forth in the request for proposal. The District shall document its determination in writing.
 - The District shall issue a written notice of intent to award supporting its contract award and stating in detail the basis of the award. The notice of the intent to award and the contract file must be sufficient to satisfy an external audit.
 - The District shall publicly announce its award, identifying the bidder to which the award is made, the price proposal of the contractor awarded the contract, and the overall combined rating on the request for proposal evaluation factors. The announcement shall also include the ranking of the contractor awarded the contract in relation to all other responsive bidders and their respective price proposals and summary of the rationale for the contract award.

- The District shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, District contracts.

Unlawful to Split Bids

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of the Public Contract Code requiring work to be done by contract after competitive bidding.

Exceptions to the Competitive Bidding Process

A. Purchasing from Cooperative Contracts or Programs

The Executive Director of Procurement, Central Services, and Risk Management is authorized to make purchases or enter into lease agreements for materials, supplies, equipment, vehicles, or other personal property with firms awarded cooperative contracts including any state, county, city, town, district, consortium, or professional organization, without calling for bids where it appears advantageous to do so, and the Board has previously approved utilization of the specific contracts authorizing such purchases.

The Executive Director of Procurement, Central Services, and Risk Management may make purchases for materials, supplies, equipment, vehicles, or other personal property through the State of California Cooperative Purchasing Program operated by the Department of General Services (DGS) without calling for bids where it appears advantageous to do so, and the Board has previously approved utilization of the specific contracts authorizing such purchases.

The Executive Director of Procurement, Central Services, and Risk Management may make purchases through the CollegeBuys Program for the Procurement of Goods and Services for Community College Districts, without conducting an independent local bidding process, if the District determines that doing so would result in a lower contract price upon the same terms, conditions, and specifications.

B. Contracts for Educational Materials

The Executive Director of Procurement, Central Services, and Risk Management may purchase supplementary textbooks, library books, and educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the colleges without taking estimates or advertising for bids.

C. Small Business and Disabled Veteran Business Enterprise Procurement and Contracting

In accordance with applicable legal codes, statutes, and regulations, the Executive Director of Procurement, Central Services, and Risk Management may procure goods, services, or information technology that has an estimated value greater than \$5,000, but less than \$250,000, to a Certified Small Business (SB), including microbusiness, or to a Disabled Veteran Business Enterprise (DVBE), if the District obtains price quotations from two or more Certified Small Businesses, including

microbusinesses, or from two or more Disabled Veteran Business Enterprises, subject to the following:

1. The District shall determine that the procurement is between \$5,000 and \$250,000 either through an independent cost estimate, market place pricing, historical averages, or other reasonable means;
2. Award of contract shall be made to the lowest responsible certified Small Business (SB), including microbusiness or DVBE who substantially meet the requirements of the specifications;
3. Prior to award of contract, the District shall verify SB/DVBE status through the Department of General Services; and
4. If any change or alteration of a contract awarded pursuant to this provision exceeds \$250,000, then the Board, by adoption of a resolution by majority vote, may authorize proceeding with the performance of the change or alteration.
5. The procurement shall be awarded or ratified by the Board as required by law.

D. Purchasing Surplus Property

The Executive Director of Procurement, Central Services, and Risk Management 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 operations of the colleges without taking estimates or advertising for bids.

E. Purchasing Computers, Telecommunications and Related Products

Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, and factors such as standardization and compatibility of existing systems, the District may procure computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus through competitive negotiation rather than the formal bid process.

The District may contract with any vendor who has submitted one of the three lowest responsible competitive proposals or competitive bids for the purchase or maintenance of electronic data-processing systems and equipment, electronic telecommunication equipment, supporting software, and related material, goods and services in accordance with AR 6360 – *Contracts-Electronic Systems and Materials* and AR 6365 – *Contracts-Accessibility of Information Technology*.

F. Professional Service Contracts

Some purchases do not legally require a formal bid process no matter what the dollar amount. Those types of purchases are usually for special services and advice in financial, economic, accounting, legal, consulting, architect, landscape architect, engineering, environmental land surveying, and construction

management. While professional services are not subject to bidding requirements all professional services contracts must be approved or ratified by the Board in accordance with AR 6370 – *Contracts–Independent Contractor, Professional, and Consultant Services*.

G. Issuing Emergency Repair Contracts

In an emergency when any repairs, alterations, work, or improvement is necessary to permit the continuance of existing college classes, or to avoid danger to life or property, pursuant to Board Resolution 18-30, the Board has delegated authority to the Chancellor to repair or replace a public facility and take other directly related and immediate action required by an emergency, including the procurement of necessary labor, services, equipment, materials, and/or supplies for such purposes without giving notice for bids (“Emergency Action”). The Chancellor and Vice Chancellor, Business Services are delegated the authority to take Emergency Action.

The Chancellor or Vice Chancellor, Business Services shall report to the Board at the next regularly scheduled meeting of the Board following an Emergency Action, reasons why the emergency did not permit delay resulting from a competitive solicitation for bids and why the action was necessary to respond to the emergency. The Board shall review the Emergency Action taken at each regularly scheduled meeting of the Board, to determine, by a four-fifths vote, that there was a need to continue the Emergency Action, unless prior to such action of the Board, the Chancellor or Emergency Designee has terminated the Emergency Action.

VI. BLANKET PURCHASE ORDERS

Blanket purchase orders may be established with approval of the Executive Director of Procurement, Central Services, and Risk Management with vendors who frequently supply items whose purchase cannot be anticipated and stocked. The intent of using blanket orders is to allow for more efficient procurement of those goods or services that constitute high volume, low-cost purchases.

VII. REIMBURSEMENT FOR PURCHASES

Employees purchasing items for the District from their own funds and expecting to be reimbursed do so at their own risk. Reimbursement will be made only if in the normal purchasing sequence, a purchase order would have been issued for the item or services purchased. Examples of circumstances in which a reimbursement may be denied include situations where the purchase was:

- not an emergency;
- unsuitable or unsafe for its intended usage;
- not legally viable (e.g. a contractual obligation to purchase from another vendor);
- not commercial or industrial grade and did not meet the required warranties and guarantees needed to support use in a college environment;

- available at a significantly lower price from another source; or
- failed to meet established District standards.

Additionally, reimbursement may not be allowed due to insufficient budgeted funds to cover the cost or there is a repeated abuse and/or pattern of requests for reimbursement of unauthorized purchases.

Requests for reimbursement must be made by submitting a purchase request/requisition accompanied by an itemized original receipt or other valid proof of payment from the vendor. The appropriate budget manager must approve the request. If the employee purchase is reimbursable, a Request for Payment will be issued and the employee will be reimbursed by commercial warrant or direct deposit.

VIII. CONTRACTS

The Board delegates the authority to the Chancellor, Vice Chancellor, Business Services, the Executive Director of Fiscal Services, and the Executive Director of Procurement, Central Services, and Risk Management to enter into contracts on behalf of the District, subject to the following:

- The District shall define “contract” to be a written agreement describing the mutual intent of the parties, the scope of work or product to be provided, the form and amount of consideration, and the requirement of mutual signatory acceptance of the parties. All contracts must be either approved or ratified by the Board.
- Contracts are not enforceable obligations until they are approved or ratified by the Board.
- The District does not recognize and shall not be bound by verbal agreements. Similarly, the District does not recognize and shall not be bound by written agreements signed on behalf of the District by an individual not authorized to bind, encumber, or contract for the District with regard to the subject of the contract or agreement.
- No matter what the expected dollar value of an initial contract for legal or public auditing services, such a contract will be presented to the Board for prior approval, unless it is determined by the Chancellor or the Vice Chancellor, Business Services, that time is of the essence, and that the District’s best interests are best served by issuing a contract on an immediate basis. Any such contract issued under these circumstances shall be brought forward to the Board for formal approval at the next scheduled Board meeting.
- Contracts valued at less than the current bid level specified in Public Contract Code Sections 20651 et seq. may be presented to the Board for ratification rather than prior to execution of the agreement by the Executive Director of Procurement, Central Services, and Risk Management. All contracts ratified by the Board shall be deemed to be fully executed District commitments and may not be subsequently canceled, withheld, or amended unless determined by the Vice Chancellor, Business Services, to be a legally unenforceable obligation.

- Continuing contracts for work or services furnished to the District are not to exceed five (5) years. Contracts for materials and supplies are not to exceed three (3) years.
- Authorization for Contracts or Agreement/Change Orders/Contract Amendments is detailed in AR 6150 *Designation of Authorized Signatures*.

IX. RECORD RETENTION

The District will retain records sufficient to detail the history of the procurement. These records include: rationale for the method of procurement, selection of contract type, contractor selection and rejection, and the basis for the contract price.

References:

Education Code Sections 76060, 81190, 81656 et seq., and 84674
Public Contract Code Sections 3400, 20100-20652 et seq., and 22000 et seq.
Labor Code Sections 1770-1777 et seq.
Government Code Sections 4525, 12940, and 53060
2 Code of Federal Regulations Part 200.318