

## Contracts

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, the duration of the contract, and the requirement of mutual signatory acceptance of the parties. In accordance with Education Code section 81655, all contracts must be either approved or ratified by the board of trustees.

All contracts valued at more than the current Public Contract Code formal bid level will be presented to the board for prior approval. When bids are required, the board shall award each such contract to the lowest responsive and responsible bidder who meets the specifications published by the district and who shall give such security as the board requires, or reject all bids.

No matter what the expected dollar value of a 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 superintendent/president and the vice president, administrative 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 board meeting.

Contracts valued at less than the current Public Code formal bid level specified in Public Contract Code sections 20651 et seq. and section 22022 et seq. may be presented to the board for ratification rather than prior to execution, with the ratification being accomplished no later than sixty (60) days after execution of the agreement by the director of purchasing and material management. A summary list of contracts to be ratified (including vendor name, purchase order number, and dollar value of the contract) shall be presented to the board as a consent item at each monthly business meeting. While a member of the board may request a copy of any contract from the superintendent/president, all contracts ratified by the board shall be deemed to be fully executed district commitments and may not be subsequently cancelled, withheld, or amended unless determined by the vice president, administrative services, to be a legally unenforceable obligation.

### MiraCosta Community College District

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Effective Date:	11/21/19, 3/10/22, 12/19/24
References:	Education Code §§81641 et seq. Government Code §53060 Public Contracts Code §§2600, 2600.5, 20103.7, 20112, 20650 et seq., 20651, 22000 et seq. Labor Code §§1770 et seq. Accrediting Commission for Community and Junior Colleges Accreditation Standard III.D.16 2 Code of Federal Regulations Part 200.318
CCLC Update:	#29, 10/16; #32, 4/18, #34, 4/19, #38, 4/21; #44, 4/24
Steering:	S/P / N/A

### **Limits**

Bids or quotations shall be secured as may be necessary to obtain the lowest possible prices as follows:

- A. Purchase of goods or services up to the limits set out in the Public Contract Code will require documented quotes.
- B. Purchase of goods or services in excess of the limits set out in the Public Contract Code will require formal advertised bids.

The bid minimums are annually readjusted by the board as required by Public Contract Code section 20651(d). The current bid minimum can be found at [www.cde.ca.gov/fg/ac/co/](http://www.cde.ca.gov/fg/ac/co/).

In securing bids or quotations, the district will avoid acquisition of unnecessary or duplicative items. Contracts involving expenditures that require competitive bidding require approval by the board of trustees prior to award.

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### **Bid Specifications**

Bid specifications shall include a definite, complete statement of what is required and, insofar as practical, shall include pertinent details of size, composition, and construction 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.

### **Notice Calling for Formal Advertised Bids**

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

Bid and contract forms shall be prepared and maintained by the Office of Purchasing and Material Management. All applicable statutory provisions and board policies shall be observed in preparation of the forms.

The director of purchasing, contracts, and material management shall be responsible for insuring 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 California Labor Code sections 1775 and 1776 governing payment of prevailing wages and California Labor Code section 1777.5 governing employment of apprentices. All bid submissions shall contain all documents necessary to assure

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, as a guarantee that the bidder will enter into contract and furnish the required contract bonds. When no longer required for the protection of the district, any certified or cashier's check received shall be returned to the respective bidder.

The director of purchasing, contracts, and material management shall make available to the prospective bidders bid forms with sets of specifications and drawings and shall provide a convenient place where bidders, subcontractors, and materiel personnel may examine the specifications and drawings.

The director of purchasing, contracts, and material management shall provide an electronic copy of the plans and specifications and other contract documents to a contractor plan room service at no charge upon request from that contractor plan room.

When permitted, a deposit for sets of plans and specifications may be required and may be refunded when such documents are returned.

### **Awarding of Bids and Contracts**

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

- A. Any and all bids and contract proposals may be rejected by the district for good and sufficient reason.
- B. All bids shall be opened publicly and bidder shall be given the opportunity to make record of the bids received.
- C. Bid and contract award recommendations to the board shall show a tabulation of the bids received in reasonable detail.
- D. Selection and Award to Lowest Responsible Bidder:
  - a. Bid and contract awards shall be made to the lowest responsible bidder substantially meeting the requirements of the specifications.
- E. Selection and Award Based on Best Value:
  - a. For the purposes of bid evaluation and selection when the district determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the district may provide for the selection of the lowest responsible bidder on the basis of best value.
  - b. "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.

- c. The district will consider all of the following in a best value selection and award:
  - i. Price and service level proposals that reduce the district's overall operating costs, including end-of-life expenditures and impact.
  - ii. Equipment, services, supplies, and materials standards that support the district's strategic acquisition and management program direction.
  - iii. A procedure for protest and resolution in the request for proposal.
- d. The district may also consider any of the following in a best value selection and award:
  - i. The total cost to of its purchase, use, and consumption of equipment, supplies, and materials.
  - ii. The operational cost or benefit incurred by the district.
  - iii. The added value to the district, as defined in the request for proposal, of vendor-added services.
  - iv. The quality and effectiveness of equipment, supplies, materials, and services.
  - v. The reliability of delivery and installation schedules.
  - vi. The terms and conditions of product warranties and vendor guarantees.
  - vii. The financial stability of the vendor.
  - viii. The vendor's quality assurance program.
  - ix. The vendor's experience with the provisions of equipment, supplies, materials, and services within the institutional marketplace.
  - x. The consistency of the vendor's proposed equipment, supplies, materials, and services with the district's overall supplies and materials procurement program.
  - xi. The economic benefits to the local community, including, but not limited to, job creation and retention.
  - xii. The environmental benefits to the local community.
  - xiii. As otherwise permitted by applicable law.
- e. The district will award a contract to the lowest responsible bidder, whose proposal offers the best value to the district based solely on the criterial set forth in the request for proposal. The district shall document its determination in writing.

- f. 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.
- g. 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.
- h. 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.

### **Purchase without Advertising for Bids**

The director of purchasing, contracts, and material management is authorized to make purchases from firms holding public contracts without calling for bids where it appears advantageous to do so.

The director of purchasing, contracts, and material management may, without advertising for bids within the same state, purchase or lease from other public agencies materials or services by authorization of contract or purchase order.

The director of purchasing, contracts, and material management may make purchases through the State of California Cooperative Purchasing Program, operated by the Department of General Services, and other public agency consortiums and/or cooperatives as appropriate.

The director of purchasing, contracts, and material 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.

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The director of purchasing, contracts, and material management is authorized to make purchases with a value between \$5,000 and \$250,000 from a certified small business, microbusiness, or disabled veteran business enterprise.

### **Duration of Continuing Contracts for Services and Supplies**

Continuing contracts for work or services furnished to the district are not to exceed five years. Contracts for materials and supplies are not to exceed three years.

### **Emergency Repair Contracts without Bid**

When emergency repairs or alterations are necessary to continue existing classes or to avoid danger of life or property, director of purchasing, contracts, and material

management may make a contract in behalf of the district for labor, materials and equipment without advertising for or inviting bids, subject to ratification by the board.

### **Other Contracts**

Nothing set forth hereinabove shall preclude the district from procuring professional service agreements (e.g., architect, engineering, inspection, construction management, services, etc.), and/or construction services, as otherwise permitted by applicable law.

### **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.

### **Record Retention**

The district will retain records sufficient to detail the history of 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.

### **Filing of Protest**

A bidder or proposer that has submitted a bid or proposal to the district and wishes to file a protest against an intended award to another bidder/proposer shall comply with the following:

1. Submit the protest in writing to the vice president, administrative services at the District Administrative Offices, located at 1 Barnard Drive, Oceanside, CA 92056;
2. The protest letter must state the basis for the protest, all facts and information in support thereof, the remedy sought, be signed under penalty of perjury under the laws of the state of California, and be accompanied by all documents that support the basis of the protest;
3. Protests must be submitted within five (5) business days of notification of the proposed award;
4. The filing of a Public Records Act Request will not extend the five (5) business day deadline within which a protest must be filed;
5. The filing of a protest will not suspend the intended award. The district retains its discretion to move forward with the intended award as permitted by law; and
6. Any protest filed after the required deadline will not be considered, except in the district's sole discretion.

### **Disposition of Protest**

Upon receipt of a protest, the vice president, administrative services will:

1. Decide to respond; or decide to delegate the obligation to respond to a designee, such as the facilities director;

2. Promptly notify the intended awardee by sending a full copy of the protest to the intended awardee and permitting the intended awardee to respond to the protest within three business days of the notice by providing a response to the district addressing the points raised in the protest and/or by submitting any other information in support of the district making the intended award;
3. Upon receipt of a response from the intended awardee, the intended awardee's response may, subject to the district's discretion, be sent or not, to the protester for a reply to be made within three business days of a request for a reply. The district may or may not require the protester to provide additional information and/or documentation as part of its reply;
4. A final decision on the protest will be sent to the protestor within ten business days of the protest being filed. The time for issuance of the decision may be extended in the sole discretion of the district;
5. If the vice president, administrative services or designee decides to reject or uphold the protest, this decision and its basis will be conveyed in writing/email to the protester, the intended awardee, and all other proposers and/or bidders that submitted a proposal or bid. In addition to the written/email notice, the decision may also be posted on the district's website;
6. If the vice president, administrative services or designee decides to reject the protest, the communication will also declare the district's intention to: (a) award to another bidder/proposer, or (b) re-open the bid/proposal process after curing any irregularities via an Addendum issued to all bidders/proposers; or (c) cancel the solicitation altogether, or (d) cancel the solicitation and re-solicit bids/proposals; and
7. Alternatively, the vice president, administrative services or designee can declare the district's intention to (a) re-open the bid/proposal process after curing any irregularities via an Addendum issued to all bidders/proposers; (b) cancel the solicitation altogether, or (c) cancel the solicitation and re-solicit bids/, without ruling on the protest.

## **Appeal**

1. If the vice president, administrative services' or designee's decision is to (a) cancel the solicitation altogether, or (b) cancel the solicitation and re-solicit proposals or bids, without ruling on the protest, there is no right to appeal.
2. If the vice president, administrative services or designee's decision is to reject the protest, the protestor has three business days from such notice within which to file an appeal in writing to the vice president, administrative services setting forth all grounds for the appeal.
3. The vice president, administrative services will immediately forward any such appeal to the district's superintendent/president who shall determine the appeal. A hearing will be set within seven business days at which time the protestor, intended awardee, and district representatives may present their positions to the district's superintendent/president.

4. The district's superintendent/president will send a recommendation to the board of trustees (the "board"). The board will then either accept or reject the district's superintendent/president's recommendation. The board's decision will constitute the district's final decision on the appeal.

### **Other Terms and Conditions**

1. A protester's compliance with this protest procedure is mandatory, and is a condition precedent, to the filing of any writ with the superior court.
2. If any other public entity and/or authority provides funding to a specific procurement subject to this procedure, and mandates protest procedures different from those stated herein as a condition for providing such funding, then this procedure may be modified to include such requirements, subject to the sole discretion of the district.
3. A true and accurate summary of the rules and procedures for filing a protest as described herein will be included in full or by reference in all requests for bids or requests for proposals and if not, is hereby deemed incorporated therein by reference.
4. File records containing documentation on protests and appeals, including but not limited to correspondence and written decisions, will be maintained by the district's Program Management Office, and all and/or a portion of such files may be discoverable in response to a California Public Records Act Request. By the foregoing statement, the district does not intend to waive, nor does it waive, any of its potential rights, remedies, defenses, privileges and/or protections, all of which are hereby expressly and fully reserved.

### **Vendor Diversity Plan**

The superintendent/president will create a Vendor Diversity Plan to increase diversity, equity, and inclusion in the District's vendors.