

<h1 style="margin: 0;">FACILITIES PLANNING MANUAL</h1> <h2 style="margin: 0;">Part D, Capital Project Design and Construction</h2>

Chapter 8, Bidding and Award of Construction Contracts

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CAPITAL OUTLAY HANDBOOK

Part D, Capital Project Design and Construction

Chapter 8, Bidding and Award of Construction Contracts

8.1 BIDDING REGULATIONS

In accordance with *Public Contract Code (PCC)*, §20651, the governing board of any community college district may award a contract for work involving more than \$15,000, or a contract for the purchase of materials involving more than \$50,000, only if the district has engaged in a competitive bidding process. Award of such a contract must be made to the responsible bidder submitting the lowest bid proposal materially responsive to the call for bids. It is unlawful to split or separate any project into smaller work orders or projects for the purpose of evading this law.

Contracts may be awarded without competitive bidding in emergency circumstances necessary for the continuance of existing classes or to avoid danger to life or property. The district's board may determine, by an unanimous vote, that such an emergency contract is necessary and, if applicable, their determination needs to be approved by the county superintendent of schools.

Competitive bidding is not required for ongoing maintenance and minor capital outlay projects as defined by *PCC* §20655. Specifically:

1. Colleges with Full Time Equivalent Students in excess of 15,000, may contract without competitive bidding for repairs to college buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance as defined in *PCC* §20656, if total cost of labor on the job does not exceed \$15,000 or total hours on the job does not exceed 750.
2. All colleges may contract without competitive bidding for repairs, alterations, additions, painting or repainting, decoration upon college buildings, repair or construction of apparatus or equipment, make improvements to grounds, erect new buildings and perform maintenance as defined by *PCC* §20656 if the total cost of labor on the job does not exceed \$7,500 or the total hours does not exceed 350, whichever is greater.

If a district board elects by resolution and notifies the State Controller to become subject to the *California Uniform Public Construction Cost Act* (§22000 et. seq. of the *PCC*), bidding standards of *PCC* §22032 apply:

1. *Public projects of \$25,000 or less may be performed by employees of a public agency by force account, by negotiated contract, or by purchase order.*
2. *Public projects of \$75,000 or less may be let to contract by informal procedures, as set forth in this article.*
3. *Public projects of more than \$75,000 shall, except as otherwise provided in this article, be let to contract by formal bidding procedures*

If a district adopts the California Uniform Construction Cost Accounting standards (PCC §22010 et seq.), contracts for projects or services up to a value of \$75,000 may be obtained by 'informal bidding.' Aside from a district's board of trustee's adoption of the Uniform Construction Cost Accounting Standards, use of this procedure will require that the district:

1. Maintain a list of qualified contractors according to category of work
2. Unless the product or service is proprietary, mail to all construction trade journals or all contractors on the list for the category of work being bid upon the notice inviting bids at least ten days prior to the bid date
3. Describe in the notice the project, date, time, and place for submission of bid proposals.

PCC §22034 allows the district to delegate the responsibility for awarding informal bids to an appropriate district staff member. Finally, if bids received are greater than \$75,000 limit, but less than \$80,000, the district's board of trustees may, by resolution adopted by four fifths of the Board members, award to the lowest responsible bid.

A project may also be exempt from competitive bidding due to the specialized nature of the service or work to be performed. The standard for the award of such contracts is based upon qualifications and a reasonable, fair price for services. For example, per *California Government Code (Gov.Code)*, §4217.16, energy conservation projects are exempt from bidding. The district may request proposals from qualified persons and award the contract on the basis of the experience of the contractor, type of technology employed by the contractor, cost to the district, and any other relevant considerations. Projects may also be exempt from bidding where the bidding process does not meet the intent of the competitive bidding laws. If a district is considering exemptions for a project, legal counsel should be consulted.

8.2 AFFIRMATIVE ACTION REGULATIONS

California Education Code (Ed. Code), §71208 establishes the '**participation goals**' for minority, women, and disabled veterans business enterprises (M/W/DVBE) on all contracts awarded by a district, with participation goals of fifteen percent (15%) for minority business enterprises, ten percent (10%) for women business enterprises and three percent (3%) for disabled veterans business enterprises. This statutory requirement is implemented by regulations promulgated in *California Code of*

Regulations, Title 5, § 59500-59509. Neither the statute nor the regulations impose an absolute requirement that contracts awarded by a district meet the M/W/DVBE participation goals. The statute, regulations and applicable law prohibit the application of strict numerical set asides unless there has been a prior factual finding of discriminatory practices. Accordingly, the failure of a bidder to have met the participation goals will not by itself render the bidder non-responsive so long as there is a show of good faith efforts by the bidder to meet the participation goals.

Aside from *Ed. Code*, §71028, if a district decides to apply participation goals for award of a contract, the provisions of *PCC*, §2000 are also applicable. *PCC* §2000 defines good faith efforts and what constitutes compliance with the participation goals of M/W/DVBE. In addition, if a district decides to require participation goals for award of a contract, the bid documents for the project must conform with the requirements of *PCC*, §2001 which requires that the bid documents issued by the district include provisions for the bidders to identify M/W/DVBE subcontractors and for application of the *Subletting and Subcontracting Fair Practices Act* (*PCC*, §4100 et. seq.).

When the district decides to apply participation goals for award of a contract, the district will have to include in the bid documents 1) appropriate instructions for compliance with the participation goals, 2) standards for determining good faith efforts, 3) definitions of M/W/DVBEs, and 4) a process for certification of status as a M/W/DVBE.

If participation goals are required and the apparent low bidder has not met the participation goals for any one of the classes of M/W/DVBEs, award to that bidder can be made only if there is a determination that the bidder exercised good faith efforts to meet the participation goals. This determination is by necessity, factually intensive and entails subjective factors. Due to the factual and subjective nature of this determination, the existence or absence of good faith efforts is often fertile grounds for bid protest. Limiting the disruptive impact of bid protest relating to the issue of participation goals requires that the district have issued thorough, comprehensive, and unambiguous guidelines for establishing good faith efforts. In addition, to the greatest extent possible, review of the good faith efforts must be on as many objectively definable criteria as possible.

8.3 PROVISIONS REQUIRED IN THE BID DOCUMENTS

Prevailing Wage

Under the *California Labor Code* (*Labor Code*), §1770, the district must ascertain, from the Director of Industrial Relations, the classifications of workers necessary for the project and the applicable wage rates for those classifications. The district also must provide bidders with notice of the prevailing wage rate requirements for the project in the bid documents.

Subcontractor List

In an effort to avoid bid shopping and the consequent quality control problems, the *Subletting and Subcontracting Fair Practices Act, PCC, §4100-4114*, requires the bidder to submit a list of the subcontractors doing portions of the work. The district must require the prime contractor to submit a list of each subcontractor (name, business location and portion of the work) performing the greater of \$10,000, or more than one-half of one percent of the total value of the bid amount. The prime contractor shall list only one subcontractor for each portion of the project as is defined by the prime contractor in the bid.

PCC, §4106 requires that if a qualified subcontractor is not listed in the bid to perform a portion of the contract work, it is assumed that the prime contractor will perform the work if the prime contractor is qualified and licensed for such work. Work may be subcontracted by the prime contractor after the award of the contract only if approved by the district. A subcontractor may be "removed from the list" only if they were listed by clear clerical error.

Securities in Lieu of Retention

The contractor has the right to substitute securities in lieu of retention withholding. Provisions and forms for this process must be included in the bid documents and must be as prescribed in *PCC, §22300*.

Limitations on Sole Source

Public agencies, including community colleges, are prohibited from drafting specifications for bids that limit the bidding, directly or indirectly, to any one specific concern per *PCC, §3400*. The specifications should list at least two brands or trade names of comparable quality or utility, followed by the words "or equal" so that bidders may furnish any equal material, product or service. The exception to this occurs when:

- 1) a material or product must match others in use
- 2) a unique or novel product application is required to be used in the public interest; or
- 3) where the product or material is to be used in a test or experiment to determine suitability of the product for future use.

In the latter case, the district board must authorize the sole source and include the basis for the decision in the specifications.

Bid Security; Bid Bonds

PCC, §20651.5, requires the following:

PCC, §20651.5. 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:

- (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 district.*

Upon 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.

Payment Bond

Under *California Civil Code (Civil Code)*, §3247, contractors awarded a contract in excess of \$25,000 by a public entity for any public work must file a payment bond with and approved by the officer or public entity by whom the contract was awarded. A **'payment bond'** is a bond with sufficient sureties for the payment in full of the claims of all claimants and that by its terms takes effect to the benefit of all claimants so as to give them rights of action to recover upon this bond any suit brought to foreclose the liens provided for in law. Providers of architectural, engineering, and land surveying services provided as part of a contract for a public works project shall not be deemed as an original contractor and shall not be required to post or file the payment bond.

To approve the payment bond, the district must confirm 1) the amount of the bond; 2) types of claims subject to the bond; 3) classes of claimants benefited by the bond; and 4) that the bond is in the form of a bond and not a deposit in lieu of a bond. There are minimum amounts for the bond listed in the law.

Contractor's License

PCC, §3300, requires:

PC, §3300 (a). Any public agency, as defined in Section 1100, the University of California and the California State University, shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with regards to contractors who contract directly with the public agency.

It is recommended that the district verifies the license status of the apparently successful bidder before awarding the contract.

Non-Collusion Affidavit

PCC §7106 requires any public works contract of a public entity, including community colleges, to have a non-collusion affidavit with the following exact wording:

**"NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID**

State of California

County of _____

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

Workers Compensation

A certificate of Workers Compensation Insurance is required by *Labor Code*, §3700.

Drug-Free Workplace

Gov. Code, §8355 has been applied to State-funded community college contracts for capital outlay projects. The statute requires that any organization or person awarded a contract shall certify that it will provide a drug-free workplace by doing all of the following:

GC, §8355(a). 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.

(b). Establishing a drug-free awareness program to inform employees about all of the following:

- (1). *The dangers of drug abuse in the workplace.*
 - (2). *The person's or organization's policy of maintaining a drug-free workplace.*
 - (3). *Any available drug counseling, rehabilitation, and employee assistance programs.*
 - (4). *The penalties that may be imposed upon employees for drug abuse violations.*
- (c). *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.*

Performance Bond and Insurance

Although not required by law, it is prudent practice for the district to require the contractor to provide a performance bond. Builder's risk insurance including, where appropriate, earthquake insurance may be required by the bonding company.

8.4 THE BID PACKAGE

Before going to bid, all of the following phases of the project should be complete and free of errors with all of the appropriate code approvals: programming, schematic design, design development, preliminary plans and construction documents.

The commonly used contract language, called 'boilerplate,' must be added to the construction contract and provided to the architect as early as possible during the construction documents phase for proper coordination. The district should cross-check the contract boilerplate language against the project specifications and reconcile it with the specification provisions prepared by the architect or engineer.

Bid Documents

The bid documents should include:

1. Invitation to bid
2. Instructions for bidders
3. Contract
 - A. General Terms and Conditions
 - B. Supplementary General Terms and Conditions
 - C. Special Conditions
 - D. Schedule of Drawings
4. Specifications
 - A. Division 1 General Requirements
 - B. Divisions 2-16 Technical Requirements
5. Drawings
6. Data for the Contractor
 - A. Geotechnical or other site studies
 - B. Structural tests & inspections (DSA, form SS103-1)

C. Other pertinent data

The bid documents may contain standard language and forms, but those standards must be checked for applicability to the project. The general conditions, specifications, and drawings must be coordinated with each other to eliminate any conflicts.

Invitation to Bid

The invitation to bid is advertised once in each of two consecutive weeks in a general circulation newspaper in the area of the project. The first advertisement must be at least fifteen days before the bid opening. The advertisement includes the project, location, owner, architect, person to receive bids, place and time for receipt of bids, type of bid opening, project scope, type of construction, type of contract, time and place for examining and obtaining bid documents, statement of affirmative action and bonding requirements.

Instructions for Bidders

The Instructions for Bidders give the bidder all the information on the bid process:

1. **Bid Preparation:** the proposal, bid security, contractor qualifications, subcontractor listing, affirmative action forms, non-collusion affidavit.
2. **Project Information:** obtaining bid documents, pre-bid meetings, job walks, submission of questions, and addenda.
3. **Bid Procedures:** interpretation of documents, submission of bids, bid opening, bid evaluation, responsive and responsible bidder, withdrawal of bids, rejection of bids, bid protest, award procedure.
4. **Other Information:** financial, legal, procedural or construction items that the district considers crucial and wants to be certain the contractor has considered them in preparation of the bid proposal.

Contract

The contract documents include the contract, the terms and conditions of the contract, the drawings and specifications. The general terms and conditions cover general requirements and procedures that do not change and are used by the district from project to project. The supplementary conditions cover project specific information, dated information such as wage rates, and other additions to the general terms and conditions. The schedule of drawings names each drawing with a title and date, thereby incorporating it into the contract. The specifications cover the general construction requirements and technical specifications.

The content of the drawings and specifications was discussed earlier in the chapter on construction documents.

Terms and Conditions of the Contract

The terms and conditions of the contract should be checked against Division 1 of the specifications to eliminate redundancy and conflicts. The terms and conditions of the contract should be clear, user-friendly and to the point. The terms and conditions must be complete and fair because unfair documents which assign undue burden or risk to the contractor could increase the price and construction claims. The terms and conditions should protect the owner from an inexperienced, unethical or litigious contractor while setting forth a smooth, workable process for the experienced contractor.

The general terms and conditions set forth: 1) the responsibilities of the owner, contractor, architect, inspector and construction manager, if applicable; 2) all the normal procedures during construction for meetings, construction schedule, quality control, corrections, clarifications, submittals, changes, payments, reporting, records, protection of persons and property, etc.; 3) all the safeguards in case of problems, such as insurance, bonds, dispute and legal resolution, termination, delays, warranties, clean up, etc.; and 4) all the close-out procedures such as punch lists, occupancy procedures, liens, record documents, commissioning, etc.

Bid Alternates

The districts may include either additive or deductive alternates in the bid package as approved by the Chancellor's Office. The dollar value of the alternates should not vary beyond ten percent of the bid estimate for the total project. The extent of the alternates should be carefully delineated in the drawings and specifications. Alternates should be carefully checked for coordination with the general terms and conditions and specifications.

The bid form must list the alternates. The instructions to bidders should indicate that the district reserves the right to accept none, all or any combination of the alternates in its determination of the lowest bidder (Refer to the note on page 16 in this chapter).

8.5 REQUEST FOR APPROVAL TO BID

Districts should submit one copy of each of the following to the Chancellor's Office to request approval to proceed to bid:

1. Letter requesting approval of working drawings and permission to proceed to bid and, if applicable, explanations of any scope or cost changes made to the project since it was approved by State Public Works Board (PWB)
2. Updated Summary of Costs and Anticipated Time Schedule (JCAF 32)
3. Updated Architect's Detail Cost estimate at the current Building Construction Cost Index
4. Division of State Architect stamped drawings and project specifications
5. Bid Form

The Chancellor's Office reviews the district's submittal, prepares the items listed below and submits one copy of items 1, 2, 3, 6, 7, 8, and 9 to the Department of Finance:

6. Compelling justification and analysis for a scope or cost change if either varies from the approved descriptions or amounts
7. "Request for Approval to Proceed or Encumber Funds" (DF14D), for permission to proceed to bid
8. Cost history for the project
9. Other related documents as needed (i.e.: Twenty-Day Letter)

The letter requesting approval to proceed to bid should alert the State if the district is seeking authority to use a different method of bidding than letting a single contract to a general contractor ("Prime Contractor" method). The letter should also alert the State to the existence of deductive or additive alternates in the bid specifications. The JCAF 32 should detail the sources of project funds supporting the State approved scope of work if not solely funded by the State. The time schedule at the bottom of the JCAF 32 should update the following dates:

1. When the project will be bid
2. The midpoint of construction
3. When the project will be completed

The bid form should explain deductive alternates and additive alternates being bid with the project. Additive or deductive alternates may only be used by the district with approval by the Chancellor's Office prior to bidding. The bid form also should explain the method of bidding if the district intends to combine projects or use phased, multiple primes, or other alternative bidding methods.

The Chancellor's Office will review the request and if it concurs with the request, will submit the DF14D to the Department of Finance to request approval and to encumber

the construction funds. If the Chancellor's Office does not concur with the request, staff will notify the district. Permission to proceed to bid solidifies project scope, funding, additive and deductive alternates, and bid method.

The Chancellor's Office will check the scope, cost, code approvals, alternates and documents for general content, quality, and completion. If the scope and cost are within budget and consistent with the preliminary plans as approved, but the code approvals or documents appear to be incomplete, the Chancellor's Office will notify the district to request updated documents. If the scope and cost are within budget but indicate significant design changes from the approved preliminary plans, the Chancellor's Office will evaluate the changes and decide whether separate approval of the changes is required before granting approval to go to bid.

The approval to bid is directly related to the project scope, cost, bidding method and funding array. If the district elects to change any of these items, an amended request to bid must be processed otherwise State funding for the project may not be released to the district upon receipt of bids..

Once the Department of Finance releases the construction funds, the Chancellor's Office will notify the district as soon as possible. The district should make every effort to go to bid within 60 days after receiving approval to proceed to bid. The district is responsible to put the project out to bid during the life of the appropriation and should be familiar with the availability of State funds for the project.

Recognized Deficits

'Recognized deficits', (cost increases above the original estimate necessitating that additional funding may be needed prior to bidding to build a project as designed) should be discussed with the Chancellor's Office prior to the request for approval to proceed to bid. When the bid estimate exceeds the budget, it is the policy of the Chancellor's Office to require the district to reengineer the project to bring it within the appropriation amount. When bid estimates exceed budget, the district must show that extraordinary efforts have been made in an attempt to reduce costs to the budgeted level by submitting a value engineering cost analysis. Any change in the project conditions should be explained in the analysis. The district should submit a side-by-side comparison of the original estimate and current cost estimate with explanations for the differences.

A decision may be made to proceed and bid a project with a recognized deficit, provided there are appropriate deductive alternates to apply to the project in the event the bid exceeds the budget appropriation.

8.6 BID PROCESS

The steps in competitive bidding are:

1. Preparation of the bid documents.
2. Notice inviting bids
3. Pre-bid meeting, job walk, and addenda
4. Bid opening and evaluation
5. Award

Preparation of bid documents is covered in Chapter 7 with additional comments in Chapter 9 on construction management.

Pre-qualifying Bidders

The community colleges are presumed by law not to be allowed to pre-qualify bidders. Even if it were legally allowed, there are a number of disadvantages to pre-qualifying bidders. The district has to be extremely careful about being consistent, setting up formal criteria, forms, and process. If a bidder is disqualified, it can appeal which is time consuming and may hold up the project. The district should consult its legal counsel on the applicability of pre-qualifying bidders.

Some of the districts target quality contractors with their mailings. Other districts discuss the projects with every bidder, pointing out the pitfalls and problems to discourage less capable contractors. These strategies may work but must be handled very carefully. All the bidders must receive the same communications from the district. The district may not, directly or indirectly, do anything to limit the bidding.

Notice Inviting Bids; Opening and Reading of Bids

In accordance with the *Ed. Code*, §81641, a district must publish the notice calling for bids or proposals in newspapers of general circulation where the district is located at least once a week for two weeks prior to bid opening. Trade publications are not considered newspapers of general circulation. No bids may be accepted after that time. A reasonable time must be allotted between notice and bid opening for an adequate number of contractors to respond to all the requirements of the Instructions to Bidders.

The bid proposals are publicly opened and read at the time and place stated in the notice calling for bids.

Bid Announcement Meeting, Job Walk and Addenda

There may be a meeting to help the bidders with the instructions, including the affirmative action requirements, and to provide further clarification of expectations.

There should be a mandatory job walk to allow the bidders to view the site in detail. If such a walk is afforded bidders, districts should be wary of any bidder that bids site unseen.

Districts may elect to use a process, with deadlines, whereby bidders submit written questions about the project. The architect responds to the questions by issuing a formal written addenda to the request for bids.

Bid Opening and Evaluation

A community college is required by *PCC*, §20651(b):

The governing board shall let any contract for a public project, as defined in subdivision (c) of section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more to the lowest responsible bidder who shall give security as the board requires or else reject all bids.

The bid opening must be public at the place and time of the Notice. No bidder can bid after the opening.

An exception is provided under *Ed. Code*, §81645 for data processing or telecommunications systems where the district board may contract with a party who has submitted one of the three lowest responsible competitive bids or proposals.

The architect and construction manager should help evaluate the bids with the district. If the apparent low bidder is considered responsive, responsible and is within the budget, then the district can proceed to obtain permission from the Chancellor's Office for award of contract.

Responsible Bidder

Award of a contract can only be made to a "responsible" bidder. Responsibility entails a number of factors and considerations ranging from financial capacity to quality or workmanship on prior projects. In considering the responsibility of bidder, it must be kept in mind that a district cannot rank bidders and their relative responsibility. The California Supreme Court has made clear that responsibility is not a relative concept; that is unless a bidder is deemed non-responsible, a district cannot award to a "more" responsible bidder. When there is determination made that the apparent low bidder is not responsible, the district must notify the bidder of the determination, the basis of the determination, and the bidder must be afforded due process rights by presentation of

evidence of responsibility at a hearing. Findings of non-responsibility are typically based on subjective considerations; with the legal obligation imposed on districts to afford the non-responsible bidder due process rights and a hearing. Almost inevitably, the bidding process will be disrupted.

Legal counsel should be consulted if a district desires to find a bidder not responsible.

Responsiveness of Bidder

California courts have consistently held that the concept of responsiveness does not extend to every requirement of the call for bids. Generally, a bid proposal is deemed responsive if it meets the "material terms" of the call for bids. If there is a finding of non-responsiveness, the bidder must be notified of the basis of the finding and afforded an opportunity to rebut the finding. Unlike the finding of non-responsibility, California courts have held that the bidder is not entitled to due process and a hearing on the finding of non-responsiveness.

Legal counsel should be consulted if a district desires to find a bidder non-responsive. There is much case law that must be considered in these situations.

Bid Withdrawals and Protests

Under *PCC*, §5100 - 5107, the bidder may withdraw its bid if it has made a mistake in completing the bid proposal. The bidder must notify the public agency of the mistake, specifying in detail how the mistake occurred, in writing within five days of the bid opening. The public agency must make a factual determination that the nature of the mistake justifies granting consent. The agency may either proceed to award to the next lowest bidder or reject all bids and rebid the project. The bidder that withdrew may not participate in the rebid of the project.

The project must be rebid if the three lowest bidders withdraw or are considered not responsive or not responsible.

Bidders may protest the award of a contract on any number of bases. When a bid protest is filed by any bidder, legal counsel should immediately be contacted by the district for advice and recommendations for disposition of the bid protest. Districts should consider the inclusion in the Instructions for Bidders provisions addressing the process for filing, review, and disposition of bid protests. This provision should be structured so that the process is clearly defined at the district level. If the district disposition of bid protest is not satisfactory to the protesting bidder, the bidder is entitled to seek judicial relief. A protest can be time consuming and may cause project delay with inflationary cost increases generally borne by the district; hence, a district should make every effort to follow correct and appropriate bid procedures.

NOTE: Districts are cautioned that recent case law includes a judgment wherein all bids were thrown out and the project had to be rebid when additive or deductive alternatives were selected out of sequence to maximize the use of funds. The court interpreted that having knowledge of the bidders identity when selecting alternates can provide an opportunity for preferential selection of contractors contrary to the provisions of law.

To comply with the court's interpretation, district may prioritize their alternatives prior to opening the bid and select them in sequence until funds are fully obligated or select the additive and deductive alternates to apply to the project prior to having knowledge of the identity of each bidder. (See FTR International, Inc. v. City of Pasadena (1997), 97 D. R. R. 3603)

8.7 REQUEST FOR APPROVAL TO ACCEPT A BID

The district should post-qualify the bidders upon receipt of bids for the project, evaluate the bid and bid submittals, and submit two copies of the following documents to the Chancellor's Office to request permission to accept a bid and to have the Department of Finance release the funds:

1. A letter selecting the lowest qualified bidder and the preferred bid alternates, if any
2. Bid tabulation listing all the base bids and bid alternates
3. A copy of the bid the district intends to accept
4. Board of Trustees approved action item selecting lowest qualified bidder (subject to available funds).

If the district does not select the lowest qualified bidder, written justification must be submitted to the Chancellor's Office, along with the above listed information. If the selected bid is within budget, the Chancellor's Office will request an approval to award from Department of Finance. When multiple prime or trade contracting methods is used, the district must submit a copy of each trade's bid which the district intends to accept.

If the selected bid is higher than the appropriation, the district must submit to the Chancellor's Office an analysis of the reasons the bid proposal exceeds the pre-bid estimate. The analysis should include:

1. A letter detailing the district's recommendation for taking deductive alternates or otherwise reducing the project cost
2. Tabulation of the base bids including all bid alternates
3. A copy of the bid the district intends to accept
4. Board of Trustees approved action item selecting lowest qualified bidder (subject to available funds).

(As needed)

5. Proposal to reengineer the project to reduce costs, or
6. Plans to provide other sources of funds to the project to increase funding

Districts must assume that project augmentations will not be possible regardless of the reasons for high bids thus, every effort must be made to maintain project costs within available funds or provide other sources of funds.

If the bid is below the appropriation, the district should not seek to use the funds for other purposes related to the approved project as State regulations require that if not part of the authorized scope, excess funds must be reverted.

Districts should make bids effective for at least 90 days so that the State has sufficient time to process the bid approval before bids expire. In the event that augmentations may be necessary this minimum time period should be increased to at least 120 days.

Bid Augmentations

Augmentation requests are highly discouraged and will only be entertained for extenuating circumstances. It is easier to modify a project to bring the projected costs within funded budget prior to the bidding stage; thus, districts are to provide accurate bid estimates (See costing estimating in Chapter 7, Section 7.6). Districts should make every effort to obtain accurate pre-bid estimates.

Augmentations may be considered if significant modifications to the existing working drawings were required by a reviewing agency due to changing building codes which substantially increased the estimated cost of the project and bid results reflect such increases. Before requesting an augmentation due to cost increases, the district will be expected to have reengineered the project at least once to reduce costs and make full use of deductive alternates.

Augmentations are not considered for the following:

1. Delays in placing the project out to bid or during construction due to the need for further design development or in anticipation of a better bid market resulting in lost purchasing power over time. Districts are expected to coordinate the development of the project with all parties (faculty, administration etc.) prior to advancing the project to the working drawing stage. Working drawings further define components of the preliminary plans.
2. Delays in scheduling caused by regulatory agencies. Districts are expected to be familiar with the bid times and other factors affecting processing time and consider same when developing pre-bid cost estimates.

3. Inaccurate estimating - bid results that substantially vary from the pre-bid cost estimates.
4. District- or architect-initiated changes to the project (See item 1.above).
5. Building a project with a modified scope by including additive alternates (or not applying deductive alternates) as agreed when project was approved to go to bid.

After a district analyzes the bids and its activities leading up to the receipt of bids and determines that the project warrants an augmentation, it should submit three copies of the following to the Chancellor's Office in the same manner as a Final Project Proposal:

1. A bid tabulation comparing the authorized funds with all bids after application of all deductive alternates.
2. A request for augmentation with:
 - A) a final cost estimate at current building CCI based on receipt of bids,
 - B) a complete narrative description justifying the need for such augmentation.
3. Explanation of the efforts made to reengineer the project and reduce costs,
4. Calculation of the amount to be requested after applying all deductive alternates and eliminating all change orders not resulting from unanticipated site conditions or increased regulatory requirements.

All augmentations are seen as a "change in cost" requiring formal notification to the PWB and possibly the Legislature. As a result, additional time is needed to process a request to accept a bid when it includes an augmentation request. (See the Twenty-Day Letter section below.)

Each request is scrutinized and subject to approval by the Chancellor's Office, the Department of Finance and the PWB. In certain circumstances augmentation requests may need to be approved by the Legislature or provided a special appropriation. The Chancellor's Office reviews the submission and provides it to the Department of Finance for review and approval. The Chancellor's Office considers many factors when determining whether to support an augmentation request. Such consideration includes whether the appropriation is still active, whether sufficient uncommitted funds still remain in the bonding authority, whether the timing for the request is appropriate and the reason for the augmentation.

Per *Govt. Code* §13332.11, The Department of Finance can administratively authorize project augmentations of less than 10 percent of the total construction cost, but may not do so until the PWB has been notified through an agenda item. Augmentations of more than 10 but less than 20 percent require formal notification to the Legislative committees and the PWB through a Twenty-Day Letter. Augmentations equal to or exceeding 20 percent require a special appropriation from the Legislature. The Chancellor's Office will notify the district upon notice of the approval or disapproval of the augmentation request. (See Chapter 9, Section 9.6 for the text of *Govt. Code* §13332.11.)

When a request to accept a bid seeks an augmentation or recognition of a change in scope or a substantial change in cost or funding sources, the district should submit its request as soon as possible after reviewing the bid package and ensure that the bid is valid for at least 120 days instead of the normal 90 days previously mentioned so that the bid will not expire before the augmentation request can be reviewed and possibly granted.

Twenty-Day Letter

A Twenty-Day Letter is required if a project:

1. Requires an augmentation of State funds of at least 10 but less than 20 percent of the construction cost
2. Desires the State to recognize a change in authorized scope, or
3. Seeks to recognize a 10 percent or greater increase in project cost that will be funded through non-state sources,

A “Twenty-Day Letter” to the Joint Legislative Budget Committee, prepared by the Chancellor's Office, is required prior to action by the Department of Finance or the PWB. A Twenty-Day Letter may be needed either when preliminary plans are approved or when a request is made to accept a bid. The letter presents the reason and justification for the cost or scope change.

When the preliminary plans contain substantial changes in cost or scope, districts need to submit preliminary plans approximately seventy (70) days before the PWB meeting that will review the preliminary plans. This timing allows the normal forty-five (45) day processing time for preliminary plan approval and adds twenty-five (25) additional days to process a Twenty-Day Letter. As mentioned earlier, when a request to accept a bid and cost increases require a Twenty-Day Letter, the bids need to be active for at least 120 days to process the Twenty-Day Letter.

8.8 OPTIONAL BIDDING METHODS

The most commonly used method to bid State-funded capital outlay contracts is the “Prime Contractor” method wherein a district ultimately contracts with one general contractor for the entire project. The general contractor, in turn, may use numerous subcontractors to complete the project. However, districts are increasing their use of other bidding methods. Alternative delivery methods that may be bid by the community colleges under current state regulations are: 1) multiple prime contracts, 2) phased bids, or 3) combined bids. These and any other alternative methods should be approved by the Chancellor's Office prior to releasing the project for bid.

Multiple Primes Contracts

This method requires the district to hire a construction manager who bids out the project in a series of packages. As a result, there is not one prime contractor but several that must be carefully coordinated by the construction manager. The process eliminates the general contractor in favor of a construction manager.

The advantages of multiple primes contract bidding:

1. The selection of a construction manager in lieu of a general contractor is based upon qualification rather than low bids, thereby reducing the possibility of getting an inexperienced or litigious contractor.
2. Subcontractors can be required to carry performance bonds and insurance.

The disadvantage of multiple primes contract bidding:

1. The process requires increased management and controls due to the number of prime contracts. This can escalate costs and require special contract conditions, advertising, etc.
2. The construction manager cannot guarantee cost or time performance.
3. Each contract may require separate action by the district's board.
4. Each contract has a ten (10) percent limit on changes.
5. If one of the contractors fails to perform, it may be difficult to prevent delays for the other contractors.
6. Subcontractors may not know how to act as prime contractors.

Phased Bids

A district may decide to do phased bidding when it is not feasible to use a single contractor for all aspects of the project. For example, there might be three bids for: 1) renovating space to relocate staff during construction; 2) demolition of the existing facility and construction of the new facility; and 3) reconfiguring the space occupied during construction. Phased bidding might also be used to do site and foundation work earlier than the main contract.

All phased bids must be approved by the Chancellor's Office and Department of Finance. They rely on extremely accurate cost estimates to ensure that early bids are not high which would force the total project cost over budget.

Combined Bids

The districts may, with approval by the Chancellor's Office and Department of Finance, combine a project with another when significant cost savings may result. The project must be bid, however, in a manner that allows Department of Finance to track the

finances of each project separately. The district must either require a breakdown of the bid by projects, or develop an accurate assessment of the percentage of the bid which will apply to each project.