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# ASSOCIATION OF CHIEF BUSINESS OFFICIALS FALL CONFERENCE

## Contracting for Goods and Services in Today's Volatile Economy

*10/24/2011*

*PRESENTED BY:*

Christopher Fallon &  
Heather DeBlanc



# Contracting for Goods and Services in Today's Volatile Environment


Association of Chief Business Officers Fall Conference | October 24, 2011  
*Presented by: Heather DeBlanc and Christopher Fallon*

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## Contracting for Goods and Services in Today's Volatile Environment

ABCO Fall Conference – Oct. 24, 2011

Presented By:  
Heather DeBlanc and Christopher Fallon



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### Overview

- Bidding and Awarding of Contracts
- Exceptions to Bidding
- Uniform Public Construction Cost Accounting Act

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### Bidding and Awarding of Contracts

- Contracts for:
  - Equipment, materials, or supplies
  - Services, except construction services
  - Repairs, incl. maintenance
- Amount – Over \$78,500 in 2011
- Competitive bidding required
- Unless an exception

PCC § 20651(a)(1-3)

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### Bidding and Awarding of Contracts

- Competitive bidding procedure
  - Notice inviting bids
  - Pre-bid conference/informational meeting
  - Sealed bids
  - Bid opening
  - Award of contract

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### Exceptions to Bidding

- Exceptions to Bidding
  - Informal Bids Below Bid Limit
  - Special Services
  - Professional Services
  - Lease or Lease-Purchase
  - Energy Services Contracts
  - "Piggyback" & CMAS
  - Electronic Data Processing Systems
  - Emergency Repairs
  - Textbooks and Educational Materials
  - Perishable Foodstuffs
  - Relocatables
  - Futility

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### Exceptions to Bidding – Informal Bids Below Bid Limit

Informal Bidding Permitted:

1. Contracts up to \$78,500 for:
  - Equipment, materials, or supplies
  - Services, except construction services
  - Repairs, incl. maintenance that are not a public project
2. Public works contracts for less than \$15,000 may be informally bid

PCC §§ 20651(a)(1-3)

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**Exceptions to Bidding – Informal Bids Below Bid Limit**

- Informal Bidding
  - Annual Notice Inviting Contractor to Register
  - Contractors on List Given Notice of Projects
  - Manner District Deems Appropriate
- No Bid Splitting
- Record Maintenance

PCC § 20657

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**Exceptions to Bidding – Special Services**

- Special Services
  - Districts have authority to contract for special services: financial, economic, accounting, engineering, legal, administrative
    - Gov. Code § 53060
    - Specially trained, experienced and competent
    - No bid requirement – case law
    - Includes:
      - Research and Development Services
      - Community College Bookstore Operations

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**Exceptions to Bidding – Professional Services**

- Professional Services
  - Architects, engineers, land surveyors, and construction management firms need competitive selection  
Gov. C § 4526
  - Bid Requirements do not apply  
PCC § 20651(e)
  - Request for Proposals/Requests for Qualifications
  - Avoid appearance of impropriety
- Insurance Services  
PCC § 20651(e)
- Waste Management Services  
Pub. Resources C § 40050

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**Exceptions to Bidding – Lease or Lease-Purchase**

- Lease or Lease-Purchase of Equipment or Services
  - CCD may enter into lease of lease-purchase agreement for equipment or services as defined in Accounting Manual  
EC §§ 81550-81552
  - Notice calling for bids or proposals
  - Term shorter of useful life or 10 years
  - Lease renewal increases cannot 7%

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**Exceptions to Bidding – Energy Services Contracts**

- Energy Services Contracts
  - District may enter into energy service contract and related ground lease
  - On terms BOT finds in District's best interest
  - Proper notice, hearing, and findings required
  - May use competitive selection process to select vendor, but not required  
Gov. C § 4217.10, et seq.
- CCDs can enter into energy management agreements for energy management systems involving solar and energy management systems  
Ed. C §§ 81660-81663

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**Exceptions to Bidding – "Piggyback"**

- "Piggyback" Bidding
  - Districts may by contract, lease, requisition, or purchase order:
    - Lease data processing equipment
    - Purchase materials, supplies, equipment, vehicles, or other personal property by using the bid of another public agency

PCC § 20652

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**Exceptions to Bidding - CMAS**

- California Multiple Award Schedule ("CMAS")
  - Authorizes Department of General Services to competitively bid contracts for materials, equipment, or supplies and make those services and products available to local public agencies  
PCC § 10298
  - CCDs may purchase through DGS  
PCC § 20653
  - Information Technology Goods and Services  
PCC § 10299
  - Telecommunication Systems  
PCC § 12120

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**Exceptions to Bidding – Electronic Data Processing Systems**

- Electronic Data Processing Systems and Equipment
  - Acquisition of IT services  
PCC § 12100
  - Contract with 1 of 3 lowest responsible competitive bids or proposals for EDP systems, equipment, telecommunications equipment  
Ed. C § 81645

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**Exceptions to Bidding – Emergency Repairs**

- Emergency Repairs
  - May perform emergency repairs, alterations, work, or improvement necessary without competitive bidding
  - Only allowed to permit the continuance of classes or to avoid danger to life or property  
PCC § 20654

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### Exceptions to Bidding – Textbooks and Educational Materials

- Textbooks and Educational Materials
  - Districts may purchase supplementary textbooks, library books, etc.
  - In any amount needed without taking estimates or advertising for bids

Ed. C § 81651

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### Exceptions to Bidding – Perishable Foodstuffs

- Perishable Foodstuffs
  - May be purchased according to District regulations, despite any conflicting PCC sections



PCC § 20660

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**Exceptions to Bidding - Relocatables**

- CCDs may lease relocatables up to 10 years
  - Requires a majority vote authorizing the action and specifying the terms of the lease

Ed. C § 81526
- CCD may purchase the relocatable at an agreed upon purchase price; rental payments paid for the use shall be applied in whole or in part

Ed. C § 81527

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**Exceptions to Bidding - Futility**

- When efforts would be unavailing, impractical, or futile
- Should adopt resolution making necessary findings
- Case law interpreting futility exception:
  - *Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.
  - *Los Angeles Dredging Company v. City of Long Beach* (1930) 210 Cal. 348.
  - *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.

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***Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.**



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*Los Angeles Dredging Co. v. City of Long Beach* (1930) 210 Cal. 348.



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*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.



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**UPCCAA**

- Uniform Public Construction Cost Accounting Act
  - Public Contract Code §§ 22000 et seq.
- Developed and Administered by Commission
  - Procedures follow normal industry procedures
  - California Community College Budget and Accounting Manual meet requirements of the Act

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**UPCCAA**

- Participation
  - Governing Body elects to participate
  - File Resolution with State Controller
  - Agency may withdraw – file resolution with Controller
- Applies Only to Bidding
  - Bonds, prevailing wage, insurance requirements – no change to statutory provision

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**UPCCAA**

- Benefits – Flexibility for Public Projects
  - \$30,000 or Less – by employee (force account), by negotiated contract or by purchase order
  - \$175,000 or Less – Informal Procedures
    - May speed up award process
    - May improve timeliness of completion
    - Eliminates some red tape and paperwork
  - Over \$175,000 – Competitive Bidding
  - Note: Bid Limit raised from \$125,000 to \$175,000 – July 1, 2011

PCC § 22032

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**UPCCAA**

- Board Adopts Ordinance
  - District to maintain list of qualified contractors by categories of work
  - All contractors on list & specific trade journal – mail notice inviting informal bids
  - Notice not less than 10 days before bids are due
  - Board may delegate authority to award informal contracts
- Contracting for Maintenance Work
  - Alternative bidding allowed (PCC 22003)
  - If District misclassifies project (\$30,000 or more) as maintenance, Commission may conduct review (PCC 22042(c))

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**UPCCAA**

- **Commission's website:**  
[http://www.sco.ca.gov/ard\\_cuccac.html](http://www.sco.ca.gov/ard_cuccac.html)
- **Uniform Public Construction Cost Accounting Act FAQ:**  
[http://sco.ca.gov/Files-ARD-Local/cuccac\\_faq.pdf](http://sco.ca.gov/Files-ARD-Local/cuccac_faq.pdf)
- **New Bid Limits eff. 7/1/11:**  
[http://www.sco.ca.gov/Files-ARD-Local/cuccac\\_cuccac\\_bidlimits.pdf](http://www.sco.ca.gov/Files-ARD-Local/cuccac_cuccac_bidlimits.pdf)
- **Cost Accounting Policies and Procedures Manual:**  
[http://www.sco.ca.gov/Files-ARD-Local/cuccac\\_cuccac\\_man.pdf](http://www.sco.ca.gov/Files-ARD-Local/cuccac_cuccac_man.pdf)

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**Thank You!**

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