Proposed Marin Community College District
Procedure

AP 6350 CONTRACTS – CONSTRUCTION

References:
Education Code Sections 81800 and 81147;
Public Contract Code Sections 20650 et seq. and 22000 et seq.

Limits
The District shall enter into construction contracts as necessary to the efficient operation of the District in accordance with Board Policies, state laws, and other pertinent regulations, with limits as follows:

- Informal procurement (typically, $30,000 or less or as revised in Public Contract Code): The District shall solicit bids from at least three independent vendors and the Chief Business Officer may sign the contract.
- Formal bids (typically, more than $30,000 or as revised in Public Contract Code): The District shall require the solicitation of formal bids (Public Contract Code Section 20651), as described below.

The Chief Business Officer or designee shall be responsible for the planning and programming of new construction, alterations and repairs of existing plants, and leasing of facilities that require state approval. This includes the planning and programming of District-initiated new construction, additions to existing plants, and major alterations and repairs of buildings and grounds.

The Chief Business Officer or designee shall be responsible for preparation of drawings and specifications for new buildings, leased facilities, additions, major alterations, and improvements of buildings and grounds together with estimates of costs.

The preliminary drawings, which shall cover all proposed facilities together with construction cost estimates, shall be submitted to the Board of Trustees for approval and authorization to proceed with the working drawings and specifications. Upon completion, the working drawings, specifications, and revised cost estimates, if any, will be submitted for approval to the Division of the State Architect and State Chancellor's Office, if applicable and as required by statute in the name of the Board of Trustees.

The final working drawings and specifications, approved by the Division of the State Architect and State Chancellor's Office, if applicable together with revised estimates, if any, shall then be submitted to the Board of Trustees for adoption.
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, construction, and/or texture of what is specified, and minimum standards of efficiency, durability, and/or utility required of what is specified.

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 the information on the District’s web site 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 Chief Business Officer or designee. All applicable statutory provisions and board policies shall be observed in preparation of the forms.

The Chief Business Officer or designee 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 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 assure compliance with these 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 Chief Business Officer or designee 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.

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

Awarding of Contracts
The awarding of contracts shall be subject to the following conditions:

- Any and all bids may be rejected by the District for any reason.
- All bids shall be opened publicly and bidder shall be given the opportunity to make record of the bids received.
- Contract award recommendations to the Board of Trustees shall show a tabulation of the bids received in reasonable detail.

Contract awards shall be made to the lowest responsible, responsive bidder meeting the requirements of the specifications.

Kindergarten-University Public Education Bond Act Projects

For projects funded by State Bond Funds, the Chief Business Officer or designee will initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program for that project under Labor Code Section 1771.7. The program will include:

- Appropriate language concerning the wage requirements of Labor Code Sections 1720 et seq. in all bid invitations and public works contracts.

- A pre-job conference with the contractor and subcontractors to discuss applicable state and federal labor law requirements.

- Project contractors and subcontractors shall be required to maintain and, at designated times, furnish certified copies of weekly payroll containing a statement of compliance signed under penalty of perjury.

- The District shall review, and if appropriate audit, the payroll records of the employees of the contractor and/or subcontractor. The review and audit shall be conducted by the Chief Business Officer, designee, or an independent third party (but not the third party with whom the District contracts to initiate and enforce a labor compliance program under Labor Code Section 1771.7).

- If an investigation establishes that an underpayment of wages has occurred, the District shall withhold any contract payments, equal to the amount of underpayment and any applicable penalties.

- The Chief Business Officer or designee shall transmit a written finding that the District has initiated and enforced, or has contracted with a third party to initiate and enforce, the required labor compliance program, to the Director of the Department of Industrial Relations, or any successor agency that is responsible for the oversight of employee wage and work hour laws.

Unlawful to Split Bids
It is unlawful to split or separate into smaller contracts any construction project for the purpose of evading the provisions of the Public Contract Code requiring work to be done by contract after competitive bidding.

- From current College of Marin Policy 8.0022 titled Formal Acceptance and Release of Retainage – Construction Projects

(EC-81147)
The Superintendent/President shall be responsible for determining that all obligations have been met by the contractor and for recommending to the Board that the project be formally accepted. All construction projects shall be formally accepted by the Board on completion before the retainage is released and final payment is made to the contractor.

- From current College of Marin Policy 8.0023 titled Visitation to Construction Sites

District construction sites are under the administrative jurisdiction of the contractor during the period of construction. Therefore, it is the policy of the Board that visitations to construction sites shall be limited to those whose business requires their presence at the site.

Office of Primary Responsibility: College Operations

NOTE: The underlined bold language signifies legally advised language recommended from the Community College League and legal counsel (Liebert Cassidy Whitmore). The wording in black ink is from current College of Marin Policies 8.0022 titled Formal Acceptance and Release of Retainage – Construction Projects adopted on 8/5/81 and revised on 4/9/85 and 8.0023 titled Visitation to Construction Sites adopted on 8/5/81. The underlined italics text is language added by College Operations. The Policy and Procedure Task Force approved this procedure on October 15, 2008.

Date Approved:
(Replaces current College of Marin Policies 8.0022 and 8.0023)
81800. (a) This chapter shall be known and may be cited as the Community College Construction Act of 1980.

(b) The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to community college districts for the construction of community college facilities. The community college system is of general concern and interest to all the people of the state, and the education of community college students is a joint obligation and function of both the state and community college districts.

In enacting this chapter, the Legislature considers that there is a need to provide adequate community college facilities that will be required to accommodate community college students resulting from growth in population and from legislative policies expressed through implementation of the Master Plan for Higher Education.

81147. (a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the community college district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a community college district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 81141, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required to file such reports, the Department of General Services shall, upon written request of the community college district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the community college district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the community college district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department of General Services shall be withheld until all the costs have been paid by the community college district.

(d) This section shall not relieve any individual of his or her responsibility to file verified reports, as required in Section
or any other documents required by the rules and regulations adopted pursuant to this article. This section shall not abrogate the provisions of Section 81144.
complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid.

The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date.

20652. Notwithstanding any other provisions of Sections 81640 to 81654, inclusive, of the Education Code, or of Sections 20651 to 20659, inclusive, of this code, the governing board of any community college district without advertising for bids, and when that board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the community college district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.

20653. Nothing in this code shall preclude the governing board of any community college district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.

20654. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or
property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

20655. (a) In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any district whose number of full-time equivalent students is 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20656, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

CALIFORNIA CODES PUBLIC CONTRACT CODE SECTIONS 22000-22003

22000. This chapter shall be known and may be cited as the "Uniform Public Construction Cost Accounting Act."

22001. The Legislature finds and declares that there is a statewide need to promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state. This chapter provides for the development of cost accounting standards and an alternative method for the bidding of public works projects by public entities.

22002. (a) "Public agency," for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) "Representatives of the construction industry" for purposes of this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.

(c) "Public project" means any of the following:
(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

(2) Painting or repainting of any publicly owned, leased, or operated facility.

(3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:

1. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
3. Resurfacing of streets and highways at less than one inch.
4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
5. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(e) For purposes of this chapter, "facility" means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.

22003. A public agency which has, by resolution, elected to become subject to the uniform construction cost accounting procedures set forth in Article 2 (commencing with Section 22010), may utilize the bidding procedures set forth in Article 3 (commencing with Section 22030) when contracting for "maintenance work," as defined in Section 22002, or when contracting for any other work which does not fall within the definition of "public project," as defined in Section 22002.