



C A L S T A T E  
FULLERTON

## **CONTRACTS AND PROCUREMENT**

OPERATIONS MANUAL

California State University, Fullerton  
Division of Administration and Finance  
2600 E. Nutwood Avenue  
Fullerton, CA 92831

*Revised October 2005*

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## INTRODUCTION

### CONTRACTS AND PROCUREMENT OPERATIONS

This report on operations was prepared in an effort to review and to compile relevant information on various procurement topics. It is intended to assist in developing guidelines, policies, and procedures that are tailored to respective campus needs. With this gathering of functional information on procurement operations, offices are given a resource document that they can examine, evaluate options, determine applicability, select relevant guidelines, and specifically modify to meet their objectives.

The report is not intended to be a model for policies and procedures. It is also not intended to be a description of best practices in procurement operations. The report should be viewed as a high level guide and a reasonably comprehensive gathering of relevant procurement information.

### CODE OF ETHICS

As public employees and purchasing professionals, we commit ourselves to provide leadership and dedicated service to our customers and to apply our best, unbiased judgment and maintain the highest ethical and moral standards in the conduct of CSU business. We guide our activity through the application and adherence to the following commonly shared values and ethical standards in our daily interaction with suppliers and University customers:

1. Conduct business in good faith; demanding honest, legal and ethical practices from all participants in the purchasing process.
2. Foster an open environment by being fair and reasonable in all dealings.
3. At no time and under no circumstances accept directly or indirectly, gifts, gratuities or other things of value which might influence, or appear to influence, purchasing decisions.
4. Promote positive supplier/contractor relationships by according vendor representatives courteous, fair and ethical treatment.
5. Make reasonable efforts to negotiate equitable and mutually agreeable settlements of controversies with supplier(s).
6. Avoid involvement in any transactions/activities that could be considered to be a conflict between personal interests and the interest of the CSU.
7. Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.

Adopted February, 2003

## ROLE OF THE CONTRACTS AND PROCUREMENT DEPARTMENT

The Contracts and Procurement Department (hereafter in this Report referred to as the “Procurement Office”) typically carries out the purchasing, contracting, and support functions for the campus. It is responsible for ensuring that all acquisitions of goods and services are made within the framework of the CSU Policy Manual for Contracting & Procurement, as well as the statutes and regulations of the State of California, the State University Administrative Manual (SUAM), and all other applicable policy issued by the State, the CSU Trustees, and the University President. Its Director and staff members are committed to providing reliable, cost effective, timely, innovative, and quality service for the campus.

The Procurement Office exists to assist faculty and staff with the acquisition of commodities and services of a specified quality, deliverable at the desired time, in the proper amount, at an economical price, and from an acceptable source. Its responsibilities engender the contracting, purchasing, and support functions for the campus community. A major objective is to promote fair, ethical, and legal practices in carrying out these kinds of transactions for the university.

The Procurement Office also subscribes to the fundamental principles encompassed in the CSU Trustees’ Policy, which are:

- a recognition that the basic mission of the CSU is to support the teaching, research and public service requirements for higher education for the people of the State of California,
- a recognition that the continued development and refinement of procurement policies in accordance with good business judgment and best business practices is paramount to the effective and efficient total operations of the CSU,
- a firm belief that it is in the CSU’s best interest to limit, as much as possible, prescriptive policies and regulations and to provide maximum flexibility to, and accountability for, the adoption of local campus policies and procedures to insure the cost effective operation of campus business, and
- a recognition that the CSU Internet website Policy Manual establishes a baseline for State Law and Trustees’ Policy and that it is the responsibility of the campus to determine the disposition of any issue not specifically addressed in the CSU Policy Manual or prescribed in State laws or regulations.



## Section 1 Authority for Transactions

1.01 Trustees' Authority: The Trustees of the CSU have the statutory authority to purchase personal property; enter into agreements for the furnishing of services; and lease, sell, or exchange any property of a state university for any purpose that they consider to be consistent with the functions of the CSU.

*Ed Code 89036, 89046, 89048; Public Contract Code (PCC) 10295, 10430I, 12100.5, 12120; CSU Policy 100.*

1.02 Chancellor's Authority: The Chancellor of the CSU has delegated authority from the Trustees to make property and services transactions consistent with the provisions of statutory authority permitted in California's Education Code and Public Contract Code (PCC).

*Standing Orders of the Board of Trustees, Chapter III, Section 4-e; CSU Policy 101.*

1.03 President's Authority: The President of each CSU campus has received delegated authority from the Chancellor to purchase, sell, lease, or license personal property and acquire or provide services in accordance with Trustees' policy and law. Responsibility for the preparation of campus internal policies and procedures consistent with CSU Policy and California law remains with the President. Should a President choose to further delegate this authority to others, the campus must maintain a record of such delegation. The delegated authority is subject to the condition that certain of these transactions be submitted to the Office of the Chancellor for review and approval. These transactions are:

- a. Any transaction that exceeds \$100,000 and is awarded without the taking of competitive bids (sole source). This condition does not apply, however, to sole brand acquisitions that are acquired under competitive procedures nor to contracts pursuant to CSU planned purchasing activities or master agreements previously reviewed and approved by the Office of the Chancellor.
- b. Transactions that contain system -wide or multi-campus obligations, liabilities or encumbrances (requests for delegation shall be considered).
- c. Transactions that contain provisions for the tax-exempt financing of equipment or services.
- d. Contracts to obtain legal services to be performed by outside (non-CSU) counsel.
- e. Lease agreements for real property where the commitments of the Trustees, or property leased, is to be used to support the issuance of bonds, certificates of participation or notes, or where there is a transfer of interest by installment sale or other form of security.
- f. Lease agreements for real property with a term of twenty or more years or with options

- that result in a potential term of twenty or more years.
- g. Lease agreements for real property with any annual lease payment equal to or greater than \$1,000,000.
  - h. Lease agreements for real property that permits the development of real property of the CSU pursuant to policies of the Trustees on public/private or public/public development.

Transactions or requests related to the preceding conditions must be submitted with all related documentation and an explanation of the transaction to the Office of the Chancellor, in order to coordinate program & legal reviews.

*Chancellor's Executive Orders 667, 669, 775; CSU Policy 102; CS&P Bulletin 02-19 Rev 3.*

1.04 Procurement Office Authority: Typically, the Director of Procurement & Support Services represents the campus President on all university property and services transactions and by virtue of that administrative appointment has been delegated the authority to prepare, process, and execute documents necessary to carry out that responsibility. In turn, the Director assigns various staff members of the Procurement Office specific responsibilities for transactions falling within specialty areas that may require certain training, experience, and skills.

1.05 Delegated Campus Authority: Authority has been delegated to campus departments to acquire certain kinds of commodities and services described as Direct Payment acquisitions. These, typically, are transactions for which little or no value can be added by processing them through the standard procurement procedures. They would routinely include commitments or obligations for such things as advertisements, postal & mailing charges, petty cash fund reimbursements, one-time repair services, stipends, fees for guest artists or lecturers (honoraria), accreditation fees, rebates & personal reimbursements, books, subscriptions, publications, registration fees, medical exams, insurance premiums, and membership fees.

An additional delegated purchasing authority known as the Procurement Card Program allows participating campus departments to expend departmental monies directly for commodities. This program is administered by the campus Procurement Office. These low-value purchases are accommodated via the issuance of procurement credit cards to campus departments that apply and qualify for participation in the program. The primary purpose of this program is to reduce processing time, costs, and delivery delays that are otherwise inherent in the standard procurement process. It is intended also to enhance user productivity and satisfaction as well as to promote user independence. Acquisition of services under this delegation program is not permitted. Any request for delegation of authority that would exceed established limits should be submitted to the Director of Procurement & Support Services. The decentralization of procurement authority on campus for low dollar acquisitions carries with it a tacit and continuing responsibility to use the campus' dollars wisely.

The Procurement Office maintains a file of all current delegations of acquisition authority (signature authorizations) for purchases placed under this program.

*CSU Executive Order 760.*

1.06 Role of the Chancellor's Office Contract Services & Procurement (CS&P) Department: The role of the Contract Services & Procurement Department (CS&P) is to develop, maintain, and administer Trustees' policy related to public procurement practices in the CSU. This policy is promulgated via the Contract Resources Library (CRL) website [www.calstate.edu/CSP/crl/policy/Policy.shtml](http://www.calstate.edu/CSP/crl/policy/Policy.shtml).

The Department serves as a legislative advocate, maintains systemwide data and procurement information resources and serves as a liaison to other California and non-California entities. CS&P also facilitates the Target of Procurement program, training, and other procurement management functions. It is directly responsible for purchasing and contracting functions in support of Chancellor's Office operations, including systemwide strategic initiatives, as requested.

*CSU Executive Order 667, 775; CSU Policy 104.*

1.07 Role of General Counsel: The Office of General Counsel serves as the Trustees' official advisory agent to the CSU and its campuses on all matters related to compliance with legal codes, statutes and regulations, and on matters related to the carrying out of Trustees' policy. For procurement operations, it serves as an approval agent for certain transactions specifically requiring legal approval or endorsement, and as a consultative body on all matters that require legal interpretation, resolution, or adjudication.

*PCC 10335(b); CSU Policy 103.*

## **Section 2            General Procurement Transactions**

The contents of Section 2 apply in general to all procurement transactions, i.e., acquisitions of personal property (commodities) or services, information technology (IT) orders & contracts, and the sale, lease, license, and disposal of CSU personal property. It excludes public works, which is embodied in Section 7. In concert with the California Legislature's intent, the requirements of Section 2 are designed:

- To clarify the law with respect to competitive bidding requirements.
- To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.
- To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.
- To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

*PCC 100, CSU Policy 200.*

## 2.01 Defining Characteristics of Purchase Orders, Service Orders, and Contracts :

- a. A purchase order, once issued under proper authorization to a vendor who has been duly informed of the intent to buy a commodity offered at a specified time and price and under mutually-agreed-upon terms and conditions, is a legally binding contract. However, it differs from a contract (formal signed agreement) in that only one party (the issuer) is required to sign it. The issuer may, however, require the vendor to sign the purchase order if there are unusual conditions that appear to warrant it.
- b. A service order is an instrument that technically can be used in much the same manner as a purchase order (signed unilaterally by the issuer), except that a service rather than a commodity is proposed to be rendered to the requester. The issuer may opt to require that the provider sign the service order if there are unusual conditions that appear to warrant it.
- c. A contract is a formal agreement, signed by all parties who are to be bound (legally) by its terms and conditions. Contracts can be issued for any number of purposes, but usually the purpose is to acquire a service or commodity from a provider in exchange for some form of consideration (usually money). The Standard Agreement form is commonly the instrument used for such a contractual purpose.

*CSU Policy 300, 400, 406.*

2.02 Competitive Bidding: The promotion of fair and open competition by the university in the acquisition of goods and services to meet its needs is indispensable to maintaining its operational health. Not only does it normally result in the best use of the university's limited financial resources, but by preventing favoritism it provides a professionally viable and comfortable climate in which the Procurement Office may conduct its business. When properly implemented, it achieves optimal benefits to everyone involved, including the general public in regard to the best use of the university's budget as appropriated by the California Legislature.

There are numerous ways to promote fair and open competition. They include, but are not limited to, public advertising for bids or proposals through daily or weekly newspapers of general circulation; trade or specialty publications; the use of the California State Contracts Register (CSCR); direct notifications to known vendors & service providers; initiating outreach programs, an extensive use of vendor & contractor source files for bidding purposes, and simple telephone calls to obtain informal quotes. Bids may be accepted electronically via the internet, but only when no bid is permitted to be opened before the deadline and all bids can be verified as authentic.

Lists may be developed and used which would include the most recent provider (if any) as well as those who have responded to past advertisements or notices issued for the same or similar products or services.

Whenever the lowest responsible bid for the award of an order or contract must be rejected as the result of disqualification of the bid or the bidder, a formal rejection notification must be sent to that bidder by telegram, e-mail or telefax. When sent by fax, the transmission receipt must

be placed in the bid file and the notification mailed with a "Return Receipt Requested." Twenty-four hour notice, excluding Saturdays, Sundays, and legal holidays, is required to be given to the disqualified low bidder before an award may be made to the next lowest responsible bidder. Responsible bidder is defined as "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the...contract."

The CSU is committed to a policy of promoting fair and open competition for the acquisition of goods and services to meet its needs. In implementing its policies and procedures for the preparation and administration of purchase orders and contracts, the CSU strives to achieve through public advertising, notification, and outreach, the following objectives:

1. Compliance with the intent of competitive bidding statutes as a means of protecting the public from the misuse of public funds.
2. Stimulation of competition in a manner conducive to sound fiscal practices by providing qualified bidders' fair opportunity to participate.
3. The elimination of favoritism, fraud, and corruption in the awarding of purchase orders and contracts.
4. Obtaining best value for the CSU while complying with legislative intent.

There are occasions when the solicitation of competitive bids is impractical or inadvisable. These are exceptions to the rule. The following transactions are not required to be competitively bid and do not require a sole source approval:

1. Emergency contracts which are necessary for the immediate preservation of the public health, welfare, or safety, or the protection of CSU property and programs.
2. Contracts for the work or services of a state, local or federal agency, the University of California, a California community college, a foundation or auxiliary organization incorporated to support the university, or a Joint Powers Agency.
3. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered.
4. Contracts for the express purposes of obtaining non-CSU legal counsel or of obtaining expert witnesses for litigation (either of these must be submitted to the Office of General Counsel for approval).
5. Contracts with business entities operating handicapped workshops that meet the criteria stated in Section 19404 of the Welfare and Institutions Code.
6. Equipment maintenance contracts where there is only one authorized or qualified source required by the equipment manufacturer for the preservation of equipment warranty.
7. Proprietary software maintenance, annual license renewals, and/or upgrade contracts.
8. Utilities contracts where there is no competition because they are solely authorized to provide service to the geographical area.
9. Public entertainment contracts for campus sponsored fairs, expositions, exhibitions, plays and concerts.

10. Contracts for conference or meeting facilities, including room accommodations for conference attendees.
11. Educational materials and information access resources related to campus library services as specified in CRL Policy Section 303.04.
12. Personal property acquisitions as specified in CRL Policy Section 301A, Bid Thresholds for Personal Property.
13. Procurement of Services as specified in CRL Policy Section 401A, Bid Thresholds for Services.
14. Orders based on previously established CSU Master Enabling Agreements.
15. Contracts in accordance with General Services Administration Pricing Schedules and California Department of General Services Multiple Award Schedules.
16. Contract amendments for time extensions, with no additional dollars being added.
17. Contract amendments to exercise options that were part of the original contract or that were part of a previously approved amendment to the contract.
18. Contract amendments that are within the scope of or incidental to the original contract scope of work.
19. Approved Sole Brand procurements where there is only one source for that product.

*PCC 101, 1103, 1601, 10306, 10345, 12100 et seq.; Ed Code 89036; CSU Executive Order 775; CSU Policy 201, 206.03.*

2.03 Solicitation Methodologies : The selection of a vendor or contractor to satisfy a university need is not necessarily based upon the lowest responsible bid or quote received. While this certainly must be a prime criterion, the quality of the product or service, provider reliability, warranties, and several other factors also can enter into the decision to award an order or contract. By and large, awards are based upon either of two different solicitation approaches: (1) An IFB (invitation for bid) based upon the acceptance of the lowest responsible bid for a product that has been fully described with detailed specifications accompanying the solicitation, or (2) An RFP (request for proposal), awarded on the basis of the highest score attained from an evaluation process. The RFP conveys essentially what is needed but leaves the detailed specifications to the proposers.

A “best value” (or “value-effective”) solicitation uses the premise of the RFP. It is normally employed for the acquisition of a large-scale system or complex program requiring an expansive array of criteria (in addition to the cost) to be considered for the award of the contract. Such criteria may include, but are not limited to such things as the quality of the product or service; estimated operational costs; previously demonstrated technical competency of the provider; financial stability and anticipated long-term reliability of the provider; terms & conditions of the warranties, guarantees, returns/refunds; and the quality and viability of the proposal itself. These and other criteria may be assigned weighted value for purposes of the evaluation. The criteria and corresponding weight factors must be disclosed to the proposers in advance, by including them in the solicitation.

A “multi-step” procurement provides a structured method for discussing alternative solutions to

the campus's requirements and to obtain bids or proposals that are responsive to these requirements. It is appropriate whenever the campus finds it desirable to solicit, review and discuss preliminary proposals, particularly when more than one solution might be acceptable. This method of solicitation permits ongoing confidential discussions with bidders and an opportunity for the solicitation document to be revised as the discussions ensue. Once the discussions have ended and the best approach to a solution has been determined, a formal solicitation document is issued. Ultimately the best offer will then receive the award.

"Negotiated competition" is an award method that allows an open and flexible environment (once the proposals have been received and evaluated), in which to arrive at an agreement about all aspects of the system or project, including a best and final offer from the proposer who submitted the proposal that received the evaluation with the highest score. If the details cannot be agreed upon or if the best and final offer is not acceptable, the campus can then elect to negotiate with the proposer who had the next-highest scored evaluation, etc.

A "Request for Quotation" (RFQ) may be utilized to obtain price quotes for products or services whenever (a) the estimated cost is less than the threshold established in policy for acquiring formal bids, and/or (b) the terms and conditions of the transaction, if any, may not be significant enough to require both parties to sign a formal agreement (in which case a purchase order or service order could be more appropriate than a contract).

A "Request for Information" (RFI) is used to determine whether there is market availability or interest in satisfying a specific campus need or providing the solution to a given problem expressed within the RFI. The issuance of an RFI to prospective providers may serve as a preliminary step to the issuance of a formal bid invitation, if multiple encouraging responses are received.

Any Formal Solicitation Requirement must:

- a. Allow for public opening of bids or proposals – Bids or proposals must be opened publicly at the time stated in the solicitation document (if it so requires, or if requested by any of the bidders), and the dollar amount of each bid must be read. No bids or proposals that have been received after the date and closing time for bids shall be considered. The campus shall maintain confidentiality regarding each bid until the public opening and reading takes place. After opening, all bids or proposals shall be available for public inspection in accordance with the solicitation document. Public inspection shall not include the disclosure of documents designated by the University to be confidential.
- b. Set forth the bid evaluation process and selection criteria – Bids or proposals shall be evaluated to determine which bids meet, and which do not meet, the requirements as specified in the solicitation document. Deviations, in the opinion of the campus, from requirements which do not materially impact the cost, quantity, or quality of the item or service to be provided or do not directly affect the outcome of the bid award may be waived.

- c. Contain provisions for the resolution of protests and disputes.
- d. Ensure fairness and uniform treatment to all bidders.

The determination for award of contract must be in conformance with the evaluation process and methodology specified in the solicitation document. Only responsible and responsive bidders may be awarded a contract.

All bids may be rejected in any case where the campus determines that the bids received are not in the best interests of the CSU.

In all cases, the procurement methodology that is appropriate to the objective to be achieved is to be used. If the procurement objective changes during the process, the process must be restarted using the appropriate methodology or else the process is to be formally modified, with written notification issued to all potential bidders who have shown interest in the bid award.

*PCC 1103, 10304, 12100.7; CSU Policy 203; CS&P Bulletin 02-19 Rev. 3.*

**2.04 Limits on Competitive Bidding (use of Sole Source, Sole Brand, “Or Equal” clauses):** Generally, no agency or employee of the State of California may draft, or cause to be drafted, any specifications for bids in connection with the purchase of supplies or materials in such a manner as to limit the bidding to any one bidder. Likewise, no invitation for bid or request for proposal may be drafted, or be caused to be drafted, for services in such a manner as to limit the bidding to a single bidder. Under California law, any purchase or contract awarded under such conditions is void.

Aside from the legally permitted exemptions from the solicitation of competitive bids (such as defined emergencies and other circumstances recognized under California statutes), there are obviously occasions when only a single source (or a single brand) exists or is suited to accomplish the need at hand. When this is the case, documentation is required to show why a non-competitive award must be issued. Such documentation is termed “justification.”

Except in cases where a product of a specified brand name is the only product that can properly meet the needs of a requester, the drafting or application of specifications or bid requirements that directly or indirectly limit the bidding to a single brand is prohibited. A “brand name or equal” is a competitive process that allows bidders to propose equivalent items. Sole source or sole brand requests shall not be justified on the basis of a limitation of funds available for the purchase, nor as a consequence of inadequate advance planning by the requester (a longer wait for the product).

A sole source procurement is permissible only when a determination has been made and approved in writing, that only one source exists that can provide the goods or services in accordance with the requirements of the CSU. A requirement for a proprietary (or sole brand) item does not necessarily justify a sole source procurement, as more than one potential bidder or supplier may exist who can supply that item. The existence of limited rights in data patent



rights, copyrights, or secret processes can help justify a sole source acquisition, but does not in and of itself justify approval of the request.

The determination as to whether a procurement has been adequately justified in writing for a sole source award shall be made by the designated authority. For sole source purchase requests of \$100,000 or greater, a copy of the requisition, the justification, and other pertinent documentation, must be forwarded to the Chancellor's Office CS&P for review and approval prior to execution of the contract. For sole source purchase requests of less than \$100,000, approval must be obtained from a campus authority at least as high as that of the Vice President for Administration/Finance.

A request for a sole source acquisition must include a written justification explaining why the sole source is necessary to satisfy the needs of the requester. The justification shall include the following information:

- a. The unique performance factors required.
- b. Why these factors are required.
- c. What other sources have been considered, rejected, and why.

The Procurement & Support Services Department provides Sole Source/Sole Brand Justification forms for campus use. A completed form is required for all sole source/sole brand requests. The adequacy of the information provided by the requester is evaluated by the Procurement Office prior to its acceptance.

*PCC 10318, 10339; CSU Policy 206 et seq; 210.07; CS&P Bulletin 02-19 Rev. 3.*

2.05 Exclusion of Vendors or Contractors from Bidding: A vendor or contractor may be removed or suspended from a campus's list of potential bidders and be prohibited from participating in any of the campus's bid processes if there has been a failure without good cause to perform in accordance with the terms of a past contract with the campus, another CSU campus, or with any other governmental entity. It may also be removed or suspended if its performance with respect to a previously awarded purchase order or contract has been unsatisfactory. Such exclusion must remain in effect for at least 90 days after the unsatisfactory performance has been recorded, but shall not exceed a period of 360 calendar days in duration. A vendor or contractor excluded from bidding shall be relieved of the prohibition at any time after the 90-day minimum period, upon demonstrating to the campus's satisfaction that the problems that resulted in the removal or suspension have been corrected.

*PCC 10303, 12102(j); CSU Policy 213.02.*

2.06 Standard Purchasing/Contracting Forms: CSU system-wide purchasing and contracting forms are available for campus use from the Contracting Resource Library (CRL) website <http://www.calstate.edu/csp/>. The Office of General Counsel at the Chancellor's Office must be consulted prior to agreeing to any deletions, additions, or significant variations from the format

or content of any standard forms developed and approved for system-wide use.

A variety of special purpose campus -produced forms also used for purchasing and contracting functions are typically maintained on campus websites. These can be found and printed out for use as needed. Deletions, additions, or significant variations from the format or content of any of these forms are not permitted without prior consultation with the Procurement Office.

*CSU Policy 409; CSU CRL.*

2.07 General Provisions for Acquisition of Commodities and Services: Under California Law and Trustees' Policy there are specific minimum terms and conditions (referred to as "General Provisions" by the CSU) to which a vendor or contractor must agree in order to do business with the State or the CSU. These provisions differ somewhat, depending upon whether the intended acquisition is a product or a service. There are formal General Provisions required for each. They are displayed as Exhibits on the CS&P Internet website <http://www.calstate.edu/csp/>.

The exact wording of these Provisions has been prescribed by the Office of General Counsel and may not be altered without pre-approval from that Office. The Provisions that are applicable to a given acquisition must become an integral part (whether referenced or stated in print) of every contract or purchase order issued. Many of these provisions are pre-printed as "Purchase Order Instructions" on the reverse side of the standard P.O. that is used by the campus. If the Provisions are referenced, the Exhibits on the CS&P website may be cited on both the bid solicitation document and the acquisition instrument for convenience, and thus need not be detailed in print. For any given contract, p.o, or service order, additional provisions may be added whenever needed, and some of the General Provisions in the Exhibit selected for use may be deleted if they are not applicable.

However, none of the General Provisions that appear on the set selected for use may be altered, and none that are required under statute or State regulations may be deleted.

*PCC 10307, 10351(2); CSU Policy 302, 410; CSU CRL .*

2.08 Use of Electronic Transmission and Telefax: The campus is authorized, under California law, to enter into and make payment on contracts by way of electronic transmission (such as e-mail, telefax, electronic data interchange) including, but not limited to, the issuance of solicitation documents and receipts of responses thereto. Electronic transmission methods are also authorized for the required notification to an apparent low bidder that a different bidder is receiving the award. Formal bids or proposals are authorized via electronic transmission, provided that appropriate measures are employed to protect the confidentiality of the sealed bid requirement. Finally, responses to protests, disputes, and complaints are authorized under Trustees' policy to be transmitted in this fashion.

*PCC 1600; CSU Policy 226.*

2.09 Vendor Data Record (State Form 204): A State Standard Form 204 must be completed by each vendor or contractor (except for a State or other governmental entity) doing business with the State of California. The Form is provided to the vendor or contractor by the Procurement Office and must be completed, signed, and returned to the campus Accounting Office before payment is rendered. This requirement relates to the taxed earnings reporting requirements (Form 1099) that must be filed by the University. The Accounts Payable Office typically collects the completed Forms.

*Revenue and Taxation Code 18637; CSU Policy 213.01.*

2.10 Vendor & Contractor Bidder Files : The Procurement Office maintains active vendor and contractor files on many products & services that are likely to be requested for the purpose of conducting the university's business and for carrying out its educational responsibilities.

*PCC 10302, 10303; CSU Policy 213.*

2.11 Computer Data Fields: Customized computer software permits Procurement Office staff to readily convert requisitions into the encumbrance documents necessary for processing commodity and service acquisitions. Abbreviated entries can be keyed into the data field blocks of the many specialty screens that are built into the software. This permits greater speed in recording the data from the requisition as well as from filed data residing in the Procurement Office that happens to be applicable to the order being placed. The applied abbreviations are known as "naming conventions." They are shortcuts to identifying and recording the various aspects of the commodity or service being sought as well as information about the provider.

2.12 Requisition Processing: Employees from on-campus instructional and administrative departments, when authorized, may complete and submit a requisition to the Procurement Office to be processed and transformed into a purchase order, a contract, or a service order. The requester is expected to furnish information on things such as the kind of commodity or service desired, the estimated cost, a suggested provider (if one is known), the timeframe for delivery or completion, the requester's department name, the account number to be charged, the name of the person making the request, and an electronic signature or signature in ink of the person authorized to approve the expenditure from the account.

When an electronic requisition is received by the Procurement Office, it is assigned to one of the staff members for further processing. When a paper requisition is received by the Procurement Office it is date-stamped or otherwise recorded as to the date it is received, and the authorized signature is verified. Next, it is assigned to one of the staff members for further processing. This entails the designation of a variety of coding requirements and other information that is generally required in obtaining commodities or services from an outside source. If an error is discovered on the requisition, it must be rejected until a correction is made by the requester. Some corrections may be made via telephone, but some may not and

must be returned to the requester. Once the requisition is accepted, provider sources (including any suggested by the requester) are researched, identified, and possibly contacted. When the estimated or quoted cost is within the limits of an informal acquisition a purchase order, contract, or service order may be prepared and issued to the provider who appears to be the best source. When the estimated cost necessitates formal bidding, the assigned staff member must make arrangements to issue a formal bid solicitation or a Request for Proposal. Bids and proposals that are received within a specified deadline are then evaluated to determine which provider will receive a purchase order or contract award. The requester may ask or query the electronic purchasing system about the status of a requisition at any time.

Deadlines for the submittal of requisitions are usually established toward the end of each fiscal year by the Associate V.P. or designee. These deadlines are outlined in an "Administrative Processing Timelines" notification that is prepared annually. Requisitions submitted after such deadlines have passed may be rejected and returned unprocessed to the requester.

2.13 Signature Verifications: For requisitions submitted on-line, the electronic purchasing system automatically scans the approval signatures on the requisition screen for authenticity. The system will not permit a requisition to be fully developed and transmitted to the Procurement Office unless the signature is authentic. For paper copy requisitions, the Procurement Office visually inspects approval signatures on hard copies of requisitions and other procurement documents that are submitted for processing.

2.14 Blanket Orders for Commodities or Services: These are primary source agreements designed to accommodate campus needs on an on-going basis for a specified period of time. An agreement of this kind encompasses a class or category of goods or services in which a vendor or contractor specializes and can readily furnish upon demand. The agreement generally establishes the prices, effective term, general provisions (administrative requirements), any special terms & conditions, a total cost-not-to-exceed for the effective term, order-placing authority, shipment procedures, discounts or prompt payment allowances, and an option to extend the effective term (if mutually desired). Quantities or minimum sales are not normally specified.

The campus must obtain an invoice and proof of receipt prior to payment. Each invoice and receipt must reference the blanket order number. Summary invoices may be submitted to the campus periodically, confirming the sale and delivery of the goods or services.

Blanket Orders must be competitively bid unless the specified cost-not-to-exceed amount is less than \$50,000, or unless a sole source justification has been approved by the Procurement Office. Change Orders to increase the amount (or to extend the effective term if so provided in the original agreement) may be executed by mutual consent, as long as the \$50,000 cost limitation is not exceeded on the Blanket Order. When practical, new bid solicitations are encouraged in lieu of Change Orders so that the campus may continuously benefit from market competition.

*CSU Policy 204(b).*

2.15 Direct Payments to Outside Providers (no P.O. or Contract): Direct payments are made for commitments or obligations for which little or no value can be added by processing the transaction through the standard procurement procedures. Such payments are processed by the campus Accounts Payable Office and are not typically supported by the issuance of purchase orders, service orders or contracts. Invoices are sent by the provider directly to the department requestor or approving authority. The department requestor or approving authority date stamps the invoice when received, ensures appropriate signatures, enters an electronic transaction in the electronic purchasing system, if necessary, and forwards the invoice to the Accounts Payable Office. Examples of such commitments or obligations may include but are not limited to expenses for: advertisements, fees for guest artists or lecturers (honoraria), accreditation fees, room rentals, rebates & reimbursements, books, subscriptions, publications, registration fees, medical exams, insurance premiums, moving expenses, and membership dues. Direct pay billings also include charges by public utilities (electricity, telephone, natural gas providers, etc.) that are submitted directly to the campus accounting office.

*CSU Policy 227.*

2.16 Multi-Year Contracts: A contract for goods or services may be entered into for any period of time deemed to be in the best interests for the CSU provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation.

A multi-year contract is authorized where:

- a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- b. Such a contract will serve the best interests of the CSU by encouraging effective competition or otherwise promoting economies in the CSU procurement process.
- c. Contracts extending into future years must include a provision stating that continuation of the contract is subject to the appropriation of funds by the California Legislature.
- d. In developing multi-year contracts, consideration should be given to the expected changes in the applicable price levels throughout the term of the contract.

*CSU Policy 208.*

2.17 CSU Master Agreements: CSU Master “enabling” Agreements (MEAs) are instruments of a pooled purchase or consortium solicitation whereby some or all CSU campuses may participate and take advantage of volume-discounted acquisitions. The CSU can also enter into such Agreements on a cooperative basis with select external organizations (such as other universities or public entities) wherever no conflicts exist in the laws, policies, and regulations that govern the respective contracting/purchasing operations. A directory for all CSU Master Agreements, CSU site licenses, pricing for computer software and subscription databases is maintained at the website [www.calstate.edu/csp/csu\\_bulletin.shtml](http://www.calstate.edu/csp/csu_bulletin.shtml).

An MEA contains instructions for entering into a sub-agreement at the campus level. To do this, generally, a separate Purchase or Contract ordering instrument must be prepared and executed by the campus. The ordering instrument must contain any appropriate attachment, rider, or cost schedule, and show reference to the MEA by name and number.

Goods and services acquisitions based on MEAs, including IT goods and services, shall be competitively bid--resulting in offers from at least three vendors if the MEAs were the result of a solicitation where multiple MEAs were awarded. If fewer than three offers are received, documentation of the solicitation methods used must be included with the contract documentation. In addition, acquisitions over \$500,000 must include documentation of the solicitation methods used and efforts to obtain competitive bids. Also, they must be approved by a campus authority at least as high as that of the Vice President for Administrative/Finance.

*CSU Policy 204(a), CS&P Bulletin 02-19 Rev. 3.*

2.18 Pricing Agreements & Schedules: These are provided by vendors and are negotiated to take advantage of a vendor's best pricing to the CSU or a campus. Such best pricing is based upon an estimated aggregate volume of the product(s) sold to the CSU or campus, either in the past or in the future. However, the vendor does not receive exclusive rights to sell the product(s) to the university. A Pricing Agreement or Schedule may be used anytime a formal bid solicitation is not required. It may also be employed to permit a comparison of prices, as informal bids or quotes are collected from other potential providers. A vendor's Pricing Agreement or Schedule may not be used as a substitute for the competitive bidding process required in formal solicitations. If, however, the Agreement or Schedule prices are shown to be lower than the bids received from other potential providers at the conclusion of the formal process, the university may document the bid results and opt to use the vendor with the Pricing Agreement or Schedule.

*CSU Policy 204(c).*

2.19 State Contracts : The State Department of General Services (DGS) negotiates State contracts and master agreements for commodities and services that generally represent the best value to the university. The availability of a commodity or service under contract with the State can be determined by a Procurement Office staff member by referencing "The Checklist of Effective State Contracts and Price Schedules" on the DGS web site. If substantial savings are realized through the use of a State contract then it is preferable to use the State contract.

A California Multiple Award Schedule (CMAS) is an agreement established between the DGS and vendors already contracted with the federal General Services Administration (GSA) and who agree to the State of California terms & conditions as imposed by the DGS. The CSU and campus may use a CMAS without obtaining further competition. Offers from small businesses that have established CMAS contracts shall be given first priority.

The use of a DGS-negotiated State contract (inclusive of California Multiple Award Schedules,

Price Schedules, etc.) normally provides a discount savings but requires a fee of approximately 2% (negotiable on high-dollar acquisitions) to be paid to DGS. When a requisition is submitted to the Procurement Office, the staff member who processes the requisition will determine whether or not the request can be filled under a State contract. The amount of the fee is determined by reference to the "DGS Price Book." The discounted contract price is then used to adjust the price on the order, while the DGS fee is generally recorded separately. The reason the DGS fee may be kept separate from the encumbrance is to avoid the necessity of leaving orders open for extended periods of time awaiting receipt of DGS billings. These billings may take place well after the orders themselves have been fulfilled.

a. Acquisitions based solely on CMAS and State Master Agreements:

IT Goods and Services. Except as otherwise provided, all IT Goods and Services acquisitions, based solely on CMAS and State Master Agreements, shall be competitively bid resulting in offers from at least three participating bidders including one small business, if available. If fewer than three offers are received, documentation of the solicitation methods used must be included with the contract documentation.

In addition, CMAS and State Master Agreement acquisitions exceeding \$500,000 must include documentation of the solicitation methods used and efforts to obtain competitive bids. They must also be approved by a campus authority at least as high as that of the Vice President for Administration/Finance. An Evaluation and Selection Report (E&SR) must be prepared and submitted to DGS for approval before the IT transaction can be executed.

Non- IT Services. Except as otherwise provided, all non-IT Services acquisitions based solely on CMAS and State Master Agreements, shall be competitively bid resulting in offers from at least three bidders including one small business, if available, and shall not exceed \$250,000. If fewer than three offers are received, documentation of the solicitation methods used must be included with the contract documentation.

Non- IT Goods. Except as otherwise provided, all acquisitions of non- IT Goods, based solely on CMAS and State Master Agreements, shall be competitively bid resulting in offers from at least three participating bidders, including one small business, if available, and shall not exceed \$100,000. If fewer than three offers are received, documentation of the solicitation methods used must be included with the contract documentation.

Exceptions. Exceptions to the requirements listed above are as follows:

1. Contracts exempt by DGS and described on the following web pages:

[www.documents.dgs.ca.gov/pd/root/excemptcon19.pdf](http://www.documents.dgs.ca.gov/pd/root/excemptcon19.pdf) .

[www.pd.dgs.ca.gov/mm0219p7.htm](http://www.pd.dgs.ca.gov/mm0219p7.htm) .

2. Contracts for essential services including services determined to be critically necessary for the operation of the campus or the delivery of services required to be provided by the campus.
3. Contracts required for health and safety including goods or services determined as necessary to preserve, protect or promote public health, including persons under the care or custody of the state; or necessary to preserve, protect or promote public safety.
4. Contracts in response to an emergency (Public Contract Code 1102) i.e. sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, property or essential public safety.

**(Note: In the event of an emergency, procurement procedures permit the immediate acquisition of necessary goods and services as needed, with necessary approvals and documentation to follow.)**

5. Avoidance of financial loss to the State – Goods and services necessary, as determined, to prevent the waste of state funds or resources, including, but not limited to instances whereby:
    - Failure to obtain will result in the loss of federal or other funding.
    - Failure to obtain will result in damage to or deterioration of state resources.
    - Failure to obtain will result in the interruption of essential state operations or programs.
    - Failure to obtain could expose the state to liability based on the risk of damage to the property of others.
    - Failure to obtain could expose the state to risk based on harm to the public.
    - Failure to obtain could result in the imposition of additional payments, penalties or fines.
  6. A sole source authorization has been obtained.
- b. Acquisitions based on open market bid solicitations that include CMAS and State Master Agreement contractors. For any proposed acquisition within the CMAS & State Master Agreement costs parameters and program restrictions that apply, competitive bids may be solicited from both participant and non-participant sources in order to obtain the best price or best value. For any proposed acquisition that would exceed the cost and parameters and program restrictions that apply, competitive bids must be solicited exclusively from non-participating contractors or vendors.

The Department of General Services (DGS) offers a variety of services that are available



to all State Agencies, including the CSU. Chaptered legislation specifies that:

“If the California State University (CSU) determines that greater efficiency would be served by contracting with the Department of General Services (DGS) or another department or agency of the State for the performance of any service function, the DGS or other department or agency shall contract with the CSU to perform the service or function.”

*CSU Policy 204(e), 225; CS&P Bulletin 02-19 Rev.3; DGS Management Memo MM 03-10.*

2.20 General Services Administration Contracts (federal): The GSA, representing the federal government, periodically establishes agreements with multiple vendors for the purpose of acquiring goods and/or services under specific prices, terms and conditions. Since these agreements are issued under a competitive process, the campus may award a contract to a vendor having such an agreement without further competitive bidding, but only if the vendor is willing to extend the same GSA prices, terms and conditions to the campus while agreeing to any additional terms and conditions that may be imposed by the campus. Once a requisition is received, the Procurement Office staff member assigned to it may determine that a vendor (or service provider) will permit the order to be filled using a GSA agreement. If permission is granted, and a lower price would result in filling the order in this way, the requester shall be notified that the GSA agreement will be utilized.

*Gov. Code 14846; CSU Policy 204 (d).*

2.21 Cooperative and/or Joint Purchasing Agreements Administered by Non-CSU Agencies: Participation in purchasing cooperatives and agreements administered by public or private organizations external to the State or the CSU is permitted for acquiring goods and services, if all of the following are met:

- a. The requirements for competition have been met in accordance with California law and CSU policies.
- b. The solicitation identified the CSU as a potential participant.
- c. The terms and conditions of the agreement under which the goods and/or services are acquired comply with CSU policies.
- d. There is a compelling business reason to participate.

In addition, the relationship between the lead agency responsible for executing and maintaining the contract and the participating members must be fair and equitable and provide the CSU with sufficient coverage in terms of risk and liability.

*CSU Policy 204(f).*

2.22 Small and Micro Businesses and the Office of Small Business Certification & Resources (State):

- a. Definition of a Small Business:
1. An independently owned and operated business.
  2. Not dominant in its field of operation.
  3. The principal office is located in California.
  4. The officers are domiciled in California.
  5. Together with affiliates is either:
    - A service, construction or non-manufacturing business with 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or
    - A manufacturer with 100 or fewer employees.
- b. Definition of a Micro Business: A micro business is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer. A Micro business shall be extended the same preferences and incentives applicable to certified small businesses.

For the purpose of this policy statement, small and micro businesses shall be collectively referred to as “small businesses.”

Small Business Goal: The CSU supports the spirit of the Legislature’s declaration as set forth in the Small Business Procurement and Contracts Act (G.C. 14385 et seq.) and supports those goals established by the Office of Small Business Certification and Resources (OSBCR), for the extent of participation of small businesses, including micro-businesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

To provide small businesses an opportunity to request preference, the Small Business Preference Form or an equivalent advisory statement shall be included in all bid solicitations for the procurement of goods and for service agreements. Evidence of certification by OSBCR (usually via copy of the OSBCR approval letter) is required from bidder in order for a bid preference to be granted.

Requirement: CSU has established a Small Business Advocate within the Chancellor’s Office, Contract Services & Procurement department. The Small Business Advocate is the single point of contact for small businesses and shall:

1. Make information regarding pending solicitations available to, and consider offers from, California small business suppliers capable of meeting the CSU’s business needs, and who have registered with the state for this purpose.
2. Ensure prompt payment to small businesses.

Each campus shall appoint a small business coordinator to facilitate the Small Business Advocate and perform the following duties:

1. Make information regarding pending solicitations available to, and consider offers from, certified California small business suppliers capable of meeting the CSU's business needs, and who have registered with the State for this purpose.
2. Ensure prompt payment to small businesses.
3. Consider small businesses under the California Multiple Award Schedule (CMAS) prior to placing an order.
4. Identify and implement innovative acquisition processes to further small business participation.
5. Give special consideration to small businesses and micro businesses by reducing experience requirements and level inventory normally required.

The awarding department may, on contracts with an estimated cost that exceeds \$300,000 give special assistance to small businesses and micro businesses in the preparation and submission of financial ability and experience in performing public works.

Special Conditions: The State is required to aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns in order to preserve free competitive enterprise and ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the State are placed with such enterprises.

To provide small businesses an opportunity to request preference, the Small Business Preference Form or an equivalent advisory statement shall be included in all bid solicitations for the procurement of goods and service agreements. Evidence of certification by OSBCR (usually via copy of the OSBCR approval letter) is required from bidder in order for a bid preference to be granted. All certified small businesses may elect to apply a 5% percent bidder's preference that shall not exceed \$50,000 in accordance with G.C. 14835 et seq.

Reporting: In order to comply with the requirements of the Small Business Procurement and Contract Act, the CSU must report to the OSBCR annually on the number and amount of contracts and purchase orders awarded to small businesses.

Annual Report: Campus shall submit to the Office of the Chancellor an annual Small Business & DVBE report. The report for the period of July 1-June 30 is due no later than September 1 . st

*Government Code Section 14835 et seq.; Title 2, Section 2896 et seq.; CSU Policy 216.*

2.23 Disabled Veteran Business Enterprise (DVBE) Participation Goals: Definition of a disabled veteran-owned small business is:

- a. At least 51 percent owned by one or more disabled veterans.
- b. Managed by, and daily business operations are controlled by one or more disabled veteran.

Disabled Veteran means a person has served in the United States Air Force, Army, Navy, Marine Corps, or Coast Guard in time of war, or national emergency declared by the President of the United States of America, and who has been discharged or released under honorable conditions. The person is currently declared by the United State Veterans Administration to be 10 percent or more disabled as a result of service in the armed forces.

Goal: A DVBE goal has been established which provides the overall percentage of the dollar amounts expended each year by a campus for contract award, including purchase orders, to be 3 percent of total expenditures.

Requirements: Disabled Veteran (DVBE) Advocate: The CSU has established, within the Department of Contracts and Procurement a DVBE Advocate, consistent with the provisions of 14846 of the Government Code, to do all of the following:

- a. Assist certified DVBE firms to participate in the agency's contracting process.
- b. Assist contract officers in seeking DVBE firms to participate in the agency's contract and procurement activities.
- c. Disseminate information to the agency's contract and procurement.
- d. Serve as an advocate for the DVBE firms that are utilized as the agency's contractors or subcontractors.
- e. Report to the Office of Small Business Certification and Resources regarding any violation of this article.
- f. Coordinate with the state DVBE advocate at the Department of Veterans Affairs in an effort to meet the statewide 3 percent goal provided for in section 999.2 of the Military and Veterans Code.

Campuses shall appoint a DVBE campus coordinator to support the CSU DVBE Advocate in these tasks.

Special Consideration: A state agency may award a contract for the acquisition of goods, services or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000) to a certified small business or disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small business or disabled veteran business enterprises as referenced in Government Code Section 14838.5

Bidders for EDP-related contract awards and for purchase order awards may opt to submit a

“Utilization Plan” in lieu of meeting the 3 percent participation requirement. Utilization Plans are described in Section 10115.15 of the Public Contract Code.

Reporting: An annual activity report shall be prepared and submitted by each campus to the Chancellor’s Office, Department of Contract and Services and Procurement. The CS&P shall consolidate activity for the CSU System, and then transmit reports to the Governor’s Office.

Annual Report: The Small Business & DVBE annual report (July 1-June 30) is due to the Office of the Chancellor no later than September 1 . s t

*Public Contract Code Section 10115 et seq.; CCR Title 5, Section 43870 et seq.; Military and Veterans Code, Sections 999.2, 999.7,999.11 and 999.12; Government Code Section 14838.5; CSU Policy 215.*

2.24 Target Area Preference Act: Any California-based company submitting a bid or proposal to the State (including the CSU) for goods to be produced or services performed at worksites in distressed (as defined in Gov. Code 4530) areas by persons with a high risk of unemployment are entitled to a 5% bid preference whenever the contract award is in excess of \$100,000. The 5% preference is applicable only to contracts awarded on the basis of lowest responsible bidder meeting specifications.

*Gov. Code 4530; CSU Policy 217.*

2.25 Enterprise Zone Act: A business may be granted a 5% bid preference when bidding on any State (including CSU) contract of \$100,000 or more for goods and services (excluding construction contracts) if the business site is located within one of 34 distinct “Enterprise Zones” located throughout California, as designated by the California State Trade and Commerce Agency. Enterprise Zones are designated to encourage job-producing business development in specified sections of cities or counties. The 5% bid preference is applicable only to contracts awarded on the basis of lowest responsible bidder meeting specifications.

*Gov. Code 7070; CSU Policy 218.*

2.26 Prison Industry Authority: The State and its agencies (including the CSU) are required to procure any available comparable goods or services produced by the Prison Industry Authority (PIA), unless specifically waived by the PIA. It is the responsibility of the campus Procurement Office to contact PIA regarding acquisition of the type of goods or services listed in the PIA Catalog or within any of its update announcements.

*Penal Code 2807; CSU Policy 224.*

2.27 Labor Abuse Prohibition: The CSU is opposed to any acts or omissions by a contracted licensee that would constitute labor abuse. Officers and employees of the CSU and its auxiliary organizations shall use their best efforts to ensure that licensees adhere to non-abusive labor

practices, including the provision of safe and healthful working conditions.

This policy shall apply to all licensing agreements with the CSU or a CSU affiliated enterprise authorizing a licensee to manufacture products bearing the name, logo, or image of the CSU. It shall include each contractor, subcontractor, vendor, or manufacturer that is engaged in a manufacturing process including assembly and packaging of a CSU licensed product.

*PCC 6108; CSU; CSU Executive Order 718, Policy 303.05.*

2.28 Non-Discrimination: All contracts of \$5,000 or more must contain a clause stating that the contractor, by signing the contract, certifies under penalty of perjury that the non-discrimination requirements of Government Code Section 12990 et seq. have been met, unless exempted under Title 2, Section 8115 of the California Code of Regulations. These are requirements that must be met by all vendors and contractors who wish to do business with the State. This required clause is included within the CSU General Provisions that must be incorporated into all formal P.O. awards of \$25,000 or more and in contracts of at least \$50,000. For awards of less than these amounts a special State Standard form (17A) is available. It contains the required non-discrimination language, references Gov. Code 12990, and can be used for this purpose.

Ethnicity, race, and gender data shall be reported annually by the CSU to the Governor and Legislature on the respective levels of participation in CSU contracts as specified in the following paragraphs:

Requirements: Campuses shall collect the voluntary information prescribed on the "Voluntary Statistical Data" form for all procurement transactions specified in the Reporting paragraph below. The data collected shall be compiled on a fiscal year basis and be reported to the Office of the Chancellor. The Voluntary Statistical Data form can be found in the CS&P web site Contract Resources Library.

Special Conditions: Awarding departments are prohibited from using the data compiled under this section to discriminate or provide a preference in the awarding of any contracts. Contractors are prohibited from using the information compiled under this section to discriminate or provide a preference in the solicitation or acceptance of bids for subcontracting, or for materials or equipment on the basis of race, color, sex, ethnic origin, or ancestry.

Reporting: In order to comply with the requirements of the code, the report shall contain the levels of participation of business enterprises, by race, ethnicity, and gender of owner, for the following categories of contracts:

- a. Construction.
- b. Purchases of materials, supplies, or equipment.
- c. Professional services.
- d. All contracts for a dollar amount of less than twenty-five thousand dollars (\$25,000).

The Ethnicity/Race/Gender Business Ownership report form can be found in the CS&P Contract Resources Library.

Campuses shall submit to the Office of the Chancellor an annual Ethnicity/Race/Gender Business Ownership report. The report for the period of July 1-June 30 is due no later than September 1. st

*Gov. Code 12990; PCC 10116 et seq.; CSU Executive Order 774; CSU Policy 220, 231 .*

2.29 National Labor Relations Board Compliance: All contracts of \$5,000 or more must contain a clause stating that the contractor, by signing the contract, certifies under penalty of perjury that contractor has not violated the provisions of Public Contract Code section 10296 regarding the issuance of orders by the National Labor Relations Board (NLRB). This requirement applies to all State agencies, and includes the CSU. This required clause is included within the CSU General Provisions that are normally attached to all formal awards. For awards between \$5,000 and the formal bid award thresholds, reference must be made to the requirements stated in PCC 10296.

*PCC 10296; CSU Policy 221 .*

2.30 Audit of Contract Required Clause: A notification to the contractor is required on all contracts exceeding \$10,000 that such contracts are subject to an audit of the Office of the University Auditor and State Auditor for a period of three years after final payment has been made.

*Gov. Code 8546.7; CSU Policy 222.*

2.31 Drug-Free Workplace Certification: State contractors and recipients of State grants are required to maintain a “drug-free workplace.” A campus may suspend payments under a contract or grant or terminate the contract or grant, or both, if a contractor or grantee has failed to comply with the legal requirements contained in Government Code Sections 8355, 8356, and 8357.

*Gov. Code 8355-8357; CSU Policy 223.*

2.32 Community Rehabilitation Programs & Workshops : Any State agency, including the CSU, may acquire commodities and services from a public or private nonprofit California corporation operating a community rehabilitation program or workshop serving persons with disabilities (including blindness) without posting a public notice or soliciting competitive bids, provided that the acquisitions are documented to meet specified needs of the agency (or campus), are obtained at a fair market price, and are made convenient to the agency (or campus) to obtain.

*Welfare Code 19403, 19404; CSU Policy 219.*

2.33 Funding Source Designations: A requester must designate an appropriate funding source on a requisition before it can be processed by the Procurement Office. The funding source must also be one that is under the authorized control of the person who signs/approves the requisition. Once an invoice has been processed against the order or contract, the funding source can be changed or corrected only by the University Accounting office via an accounting adjustment voucher, or by a budget transfer.

2.34 Requisitions against Trust Accounts: Any completed requisition that is intended to utilize a Trust Account number for its funding source must clearly display the Trust Account number in the funding source field in order to differentiate it from General Fund appropriations that may otherwise routinely be used. Processing of the requisition may then follow the regular processing steps with no other special field designations being required.

2.35 Requisition Log (office): Daily requisitions may be automatically numbered and collected within the electronic purchasing system. The Procurement Office may also maintain a log of paper copy requisitions received, with entries recorded daily as requisitions are received. Each paper copy requisition is also date stamped as it is received in the Procurement Office. Entries are made in the Requisition Log as the requisitions are received, and a buyer or contract specialist is assigned for its processing. If a requisition must be rejected for any reason, it is so noted in the Log and then returned to the requester for corrections or other appropriate actions to be taken, as instructed by the Procurement Office staff member to whom the requisition has been assigned.

2.36 Requisition Tracking: Daily Requisitions are collected within the system every workday. All relevant information of an individual requisition is contained in the database.

2.37 Requisitions Not Processed by Procurement Office: Occasionally a requisition assigned to a buyer or contract specialist may be determined not to require conversion into a formal transactional instrument. In that event, the buyer or contract specialist should make a notation to that effect in the personal daily log, if maintained, and then proceed to advise the requester as to what manner the request can (or will) be processed. Often such a request can be fulfilled by a campus service, be purchased using a procurement credit card, or be treated as a Direct Pay Expense. Examples of requested acquisitions of this kind might include printing or photocopying, mailer preparations, subscriptions, memberships, books, office supplies, forms, honoraria, special lecture events, and other commodities or services attainable via less formal means.

2.38 Requisitions for Subsequent Fiscal Years: Requisitions submitted to the Procurement Office that call for commodities or services to be purchased with funds budgeted for the following fiscal year must be submitted as a future-year requisition and be clearly identified as such with the following fiscal year's designation and account information.

2.39 Requisition Status Reporting: Campus departments can ascertain status of a given



requisition at any time utilizing the “inquiry” operations of the on-line financial system. Questions should be directed to the Procurement Office.

2.40 Annual Year-End Deadlines for Submitting Requisitions: Toward the latter half of each fiscal year an administrative notification is prepared and transmitted by the Associate Vice President or designee to advise campus departments of the deadlines established that year for submitting requisitions. The deadlines on this notification vary, depending upon the funding used and type of acquisition being requested.

2.41 Purchase Order and Contract Coding Designations: Codes serve the important purpose of streamlining and speeding up the data collection function while accommodating electronic sorts needed to meet reporting requirements. Some coding instructions may generally be viewed on the Procurement Office website. Coding manuals are also used as guides by Procurement Office personnel for applying some of these notations, while certain others must be furnished on the requisitions by the requesters. Given codes may undergo revision from time to time; therefore, it is essential that all individuals who have the responsibility for preparing and processing acquisition documents (including requisitions) are collectively referencing the latest version of any coding instructions.

2.42 Commodity/Category Codes : This is a special category of coding designations that pertains to every kind of acquisition, for products and services alike. Requestors or Procurement Office staff members must assign an appropriate code for the requisition to be processed.

2.43 Change Orders to reflect Price Changes or Other Modifications : A Change Order is prepared by the Procurement Office detailing the need for a required change. Change Orders can include such things as price revisions, supplier name or address corrections, extension errors, delivery or shipping corrections, or descriptive changes in the goods or services being requested. A requested change to an order-in-process must be documented before a Change Order is prepared and issued.

2.44 Zero Encumbrance Balance (No-Value) on Open Orders: Encumbered purchase orders, contracts, and service orders with no-value remaining in the designated cost or price data fields cannot be held open. The computer software modules do not accommodate standing encumbrances without having price or cost figures connected to them. For an order to be kept open for further activity (such as on some multi-year contracts) the cost or price data block must contain a holding line figure of at least one (1) cent in value. One way to re-create or preserve some amount of value on an open order with zero balance is to submit a Change Order or Amendment before the order is closed, to reflect the requested services or commodities not yet received. (This may not be applicable to all CSU campuses depending on software utilized).

2.45 Termination or Cancellation of Orders: The words “termination” and “cancellation” are often interchangeable in use—both result in the closure of a purchase order, contract, or service

order ahead of the time previously agreed upon by the parties. Generally, purchase orders or service orders (unilaterally-signed agreements) are “cancelled”, whereas contracts (bilaterally-signed agreements) are terminated.

Upon receipt of a request for cancellation, the Procurement Office staff member originally assigned the requisition must make contact back with the requester to advise whether or not the request can be cancelled (if the contract or order has already been issued to a provider, it may not be recallable). If both the requester and the provider are willing to accept a no-cost cancellation, the cancellation may be processed. If there is a cost to cancel (e.g., a restocking fee, a return fee, etc.) the cost must be brought to the requestor’s attention. If the cost is accepted, that cost must be covered either by a change order (Change Request Form) or a new requisition from the requester before a cancellation can be processed.

Many contracts have provisions that allow for termination for convenience by either or both parties to the contract. The provisions may call for termination with a specified number of days advance notice or may allow a party to terminate the contract when or if a certain event occurs. In most cases a notice of intent to terminate should be initiated, with the actual notice of termination following.

When a contractor fails to deliver supplies or provide services or otherwise substantially fails to perform the terms and conditions of the contract (this is termed a “default”), the campus may terminate the contract for cause in accordance with the termination clause (generally included in the CSU General Provisions) as stated in the contract. Instead of an outright default, however, the contractor may commit an anticipatory breach of the contract that justifies a termination, such as a notification to the campus that the goods or services cannot be delivered within the timeframe specified in the contract, that a product substitution will be delivered rather than the product specified, or that the cost will be more than that to which the two parties have agreed.

2.46 Split Funding of Orders: Multiple funding sources may be specified on a requisition whenever appropriate. For example, the General Fund and a Trust Fund may both be used to support the purchase of a product in whatever proportion the person who has the authority to expend monies from the respective accounts within those Funds has determined. The split funding must be clearly identified on the requisition.

2.47 Use of Prior Year Funds: No “new purchases” that use prior-year funds may generally be requested without an approved waiver from policy issued by the Associate Vice President, Budget Services, or designee. The use of prior-year funds is generally restricted to payments against encumbrances established in previous years for specifically identified acquisitions that were not acquired (or delivered) within the fiscal year that the encumbrance was established.

2.48 DGS Billing Codes: These are account code numbers assigned by the State Department of General Services (DGS) to various state agencies (and including the CSU) for the purpose of collecting fees that the DGS exacts for use of its negotiated contracts or for other administrative and business services that it provides. Portions of the sequential blocks are identified to

various units within the campus for chargeback purposes as the DGS fees are paid from campus accounts. The DGS Billing Code must appear on any order or contract issued under a State-negotiated award, such as a California Multiple Award Schedule or a DGS Price Schedule.

*CSU Policy 225*

2.49 Delegation of Purchases : The development of methods for reducing the costs of executing purchases through expedited order processing, the use of procurement credit cards, and/or the issuance of low -value purchase authorizations is a CSU policy that campuses strongly support. Authority to acquire commodities typically up to \$1000 (or higher as authorized by individual campuses) directly from a vendor has been delegated to most individual offices on campus, via a procurement credit card system.

There are specific rules and parameters under which those who receive this delegation must operate. The rules and parameters have been established and are routinely monitored jointly by the Accounts Payable and Procurement Office for compliance. They include the prohibition by State law, CSU Policy, or campus policy of an array of substances, products, and services that may not be purchased or acquired under delegated authority. Campus entities that have received the delegation have the responsibility of knowing and complying with these rules and parameters. They are generally embodied in a printed document detailing the credit card program.

*CSU Policy 205;*

2.50 Procurement Cards : Low -value purchases are authorized for instructional and administrative offices, via authorized (formally-signed) delegations. A card may be used to pick up items in person, or for placing orders by telephone or facsimile, Internet orders, or mail-in orders. Cards are made available through a contract between the campus and an outside bank- affiliated service provider. Detailed instructions for use of the cards including written and enforced prohibitions, limitations and restrictions, can be generally provided by the Procurement Office.

Activity reconciliations are prepared and submitted monthly by card holders to their department heads for examination and approval. They are then transmitted to the Accounts Payable Office for auditing, recording, and filing. Charges made on the cards late in a given fiscal year are subject to being charged against the subsequent year's budget, depending upon the deadlines.

*CSU Executive Order 760; CSU Policy 205.*

2.51 Price Justification on Non-Formal Acquisitions: Competition is sought, via either formal or informal solicitation, for transactions under \$50,000 whenever the Procurement Office determines that the competition is necessary to develop a source, validate prices, or for other sound business reasons. Informal solicitations may be secured either orally or in writing. The number of providers from whom quotes or bids are solicited is the responsibility of the

Procurement Office and will generally depend upon the size, complexity of the purchase, and market conditions. Before execution of the order there shall be a determination that the price is reasonable.

“Reasonable price” is defined as a price that does not exceed that which would be paid in the conduct of a competitive business. It may be established by market quotes, price or cost analysis, or the experience and judgment of the Procurement Officer (or a designee). Such judgment considers total value to the campus. There is value to the campus in acquisitions that meet the campus needs for quality, quantity, and delivery time, and those that further small business and other affirmative action goals.

*PCC 10301; CSU Policy 201, 301, 401.*

2.52 Confirming Orders: Standard policy does not generally permit campus departments to place orders directly with vendors and service providers, apart from using the universal delegation of authority that permits acquisitions to be made under the Procurement Credit Card Program or through the use of a petty cash fund. Instead, requisitions must be submitted for processing to the Procurement Office. A confirming order, as used in its technical sense, is a signed commitment issued by the procuring authority that follows a verbal or unofficial request to furnish the same goods or services. There are several potential problems associated with confirming orders, such as the receipt of duplicate shipments, violations of legal requirements, the issuance of redundant payments, missed discounts, delays in settlements, lost items, and unidentified invoices. Certain items or services requested, however, may not need to undergo competitive pricing, negotiations for more favorable terms, scrutiny for compliance with certain requirements, etc., and therefore may qualify for a more streamlined process known as the Direct Payment procedure. This procedure does not typically require a requisition to be prepared by the requester, but does necessitate the transmittal of a Request for Direct Payment (in hard copy form) and the corresponding invoice from the vendor to the Accounts Payable office for processing and payment (or for reimbursement if the invoice has already been paid). Emergency orders (in the event of life, health, or property threatening situations) that must be placed outside of regular office hours are handled on a case-by-case basis.

2.53 Emergency Acquisitions: As defined in State statute, an “emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. When such an emergency requires the immediate issuance of an order that would otherwise require a formal bid solicitation, an approved justification must be prepared and attached to the requester’s requisition, thereby becoming a permanent part of the file. The form must describe what is being procured, why it is needed, and why formal bids could not be solicited. It must first be approved by a department head and then by the Director of Procurement & Support Services, or designee.

*PCC 1102, 10302; CSU Policy 209.*

2.54 **Financed Acquisitions:** Most CSU acquisitions that are selected for financing (periodic payments issued against the principal and interest) will qualify as “tax-exempt” under the provisions of federal and state law. Any financing arrangements should be planned and negotiated with care, since interest charges add to the total cash outlay for the acquisition. Financing arrangements are not normally considered unless the acquisition has a cost of at least \$100,000.

Tax-exempt acquisitions are also subject to additional requirements that assure compliance with federal tax code provisions. Financed acquisitions are identified as tax-exempt whenever the seller/lesser or third party financier intends to claim the interest portion of its proceeds as exempt from federal income tax. Helpful information for the development of contracts that provide for a financed tax-exempt acquisition can be found on the CS&P website at <http://www.calstate.edu/csp/>. Fully developed contracts or purchase orders containing the tax-exempt provisions must be submitted, along with all their related financial documentation, to the Financing & Treasury Department at the Chancellor’s Office for review and approval prior to execution. The Chancellor’s Office is responsible for maintaining records to insure that financiers who issue tax-exempt obligations on behalf of the CSU comply with federal tax reporting obligations. The Chancellor’s Office also maintains pre-negotiated terms and conditions with selected financiers, provides model agreements, and coordinates efforts to obtain legal counsel on tax-exempt issues as they arise.

*Ed Code 89036; PCC 10320.5, 12113; CSU Policy 214.*

2.55 **Document Numbering Schemata:** Departmental requisitions that are submitted to the Procurement Office in the electronic purchasing system are sequentially numbered as they are developed. Requesters are encouraged to submit requisitions to the Procurement Office that are sequentially numbered whenever possible. Once a valid requisition is received by the Procurement Office it is transformed into a more formal transactional document such as a purchase order, service order, contract, or a lease. At the beginning of this process a new document number is routinely assigned for ordering, tracking and recording purposes. The requester is provided with a copy of this newly created and computer-generated transactional document. The transaction is then no longer officially identified with the requester’s original requisition number—which has become history at that point. A copy of the requisition may, however, be maintained as an attachment to the transactional document copy by the requester, for internal reference, as is done by the Procurement Office.

2.56 **Purchasing & Contracting Data Input Printouts:** Specially-created reports on procurement activity data (including P.O.s, contracts, and other open or completed orders) can be prepared and printed out for use by Procurement Office staff. Brio query may also be used directly by Procurement Office staff to create and examine special activity field-grouped reports, as needed.

2.57 **Personal Use of University Information:** Unless specifically stated within the terms and conditions of an employment or contractual relationship, it is unlawful for a person to utilize any CSU or CSU auxiliary organization information, that is not a matter of public record, for personal

pecuniary gain. Prohibition of such utilization applies whether or not a person is or is not so employed or under contract at the time the gain is realized.

*Ed Code 89006; CSU Policy 210.01, 210.04.*

2.58 Personal Use of University Property or Facilities: No CSU employee may use State or CSU property or facilities for non-state purposes, unless such use has been authorized in writing by a person having custodial responsibility for such property or facilities. This authorization must include a statement which assures that such personal use is of benefit to the CSU.

*G.C. 8314; CSU Policy 210.02.*

2.59 Misrepresentation: The use of CSU procurement facilities or procedures to obtain property or services for personal use, or misrepresentation to vendors or contractors that personal acquisitions are for the CSU when they are not, can result in prosecution for misrepresentation, embezzlement, and theft.

*PCC 10334; Penal Code 72; CSU Policy 210.03.*

2.60 Conflict of Interest: It is unlawful for any person to utilize any information, not a matter of public record, that is received by that person by reason of his or her employment by, or contractual relationship with, the trustees, the California State University, or an auxiliary organization of the California State University, for personal pecuniary gain, not contemplated by the terms of the employment or contract, regardless of whether the person is or is not so employed or under contract at the time the gain is realized.

- a. No CSU employee shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods. Detection of such an arrangement may lead to an invalidation of the contract.

Consulting agreements must be in compliance with conflict of interest requirements as specified herein, under Section 4.

For two years following separation, CSU employees separated from employment may not enter into a contract in which the employee was engaged in negotiations prior to separation. CSU employees may not contract with CSU for one year following separation if the contract involves the same policy area where the employee previously served except as an expert witness or as an attorney working on the same matter when employed. Any violation of this policy may void the contract.

No state employee may make or participate in the making of any decision in which the employee has a personal of financial interest.

Employees designated in the CSU Conflict of Interest Code must disqualify themselves

from making or participating in a decision which would have a material effect on a personal financial interest.

Employees designated in the CSU Conflict of Interest Code may not accept any gift of more than \$250 in any calendar year from any source which requires disclosure in the CSU Conflict of Interest Code.

- b. CSU employees, prior to participating in the procurement process must complete a Conflict of Interest and Confidentiality Statement. The completed statement shall be retained as part of the contract file.

A model Conflict of Interest and Confidentiality Statement form is available at the CS&P web site <http://www.calstate.edu/CSP/crl/crl.shtml#forms> .

A clause shall be included in all contracts for consultants that requires the filing of a Statement of Economic Interest, Form 700, wherever such consultants will serve in a staff capacity and will be involved or will participate in the making of decision that may foreseeably have a material effect on CSU financial interests. Implementation of this requirement shall be coordinated with the campus Statement of Economic Interest filing office and if necessary, legal counsel. A model Statement of Economic clause is included in General Provisions for Commodity and Service Acquisitions, CRL:020, also available at the CS&P web site.

*Ed Code 89006 and 89909; Gov. Code 1090, 87100, 87103, 89503; PCC 10365.5, 10410, 10411, 10420; Title 2 Sec. 18700 et seq.; Title 5 Sec. 43810; CSU Policy 210.04, 412.10.*

2.61 Endorsement of Products or Services : No person shall, without the permission of the Trustees, use the name "California State University" or any abbreviation of it or any name of which these words are a part, for endorsements of any commercial product or service through the use of advertisements or promotions. Neither shall officers and employees of the CSU, within their official capacities, endorse any commercial product or service.

*Ed Code 89005.5(a) (2) (3); Trustees' Resolution 63-16; CSU Policy 210.05.*

2.62 Splitting of P.O.s or Contracts: No person shall willfully split a single transaction into a series of transactions for the purpose of evading bidding requirements as is prescribed in law, regulations, or CSU policy.

*PCC 10329; CSU Policy 210.08.*

2.63 Advance Payments: Payment in arrears is the prescribed method of remitting payments for State acquisitions. Documentation is required to be recorded by the disbursing officer that appropriate return and/or in-kind value has been received before a disbursement of funds is made. Advance payments on some types of transactions are permitted, however, where (1) it

can be determined that there is no other way to obtain the service or commodity, (2) the advance payment is determined to be in the State's best interests, or (3) wherever specifically authorized in law.

*PCC 10312; Title 2, Sec. 679; Gov. Code 11257; CSU Policy 210.09.*

2.64 Bid Security Deposits: A bid bond that is executed by a State-registered bonding agent on behalf of its client (as a competitive bidder) for a State contract or purchase order is often made a requirement by the campus as a condition for accepting a formal bid. However, in lieu of this requirement, the campus may elect to accept a certified cashier's check, or cash, along with the submitted bid. If this form of bid security deposit is accepted, a signed receipt must be prepared and provided to the bidder. The copy is transmitted along with the deposit to the campus Cashier's Office where a holding account for the deposit is established until after issuance of the purchase order or execution of the contract. All bid security deposits must ultimately be returned to the bidders.

*PCC 10318 .*

2.65 Protests, Disputes, and Complaints : Any protest, dispute, or complaint lodged by a bidder, vendor, or contractor shall initially be addressed by the staff member in the Procurement Office who was assigned to the transaction. Often, an issue may be resolved simply by providing a clarification of the bid document. However, once it becomes evident that a matter cannot be resolved informally by this means, it must be elevated to the next level. At that point, the Procurement Officer (or a delegated representative) formally acknowledges the issue by serving written notification to the bidder, vendor, or contractor that a full and complete formal statement detailing the nature of the problem must be received by the campus within five (5) working days after the notification is issued. Failure to file the formal statement shall be interpreted to mean that the matter has been withdrawn.

Once the formal statement is received, the matter shall be addressed by the Procurement Officer, or designee, possibly aided by a bilateral meeting or series of meetings whenever necessary. If a resolution is not reached at this level, the matter may be escalated to the Vice President, or a person designated by the V.P., for further assessment. The written formal statement filed by the bidder, vendor, or contractor shall then be re-reviewed and the actions of the campus examined to determine whether it acted in a manner consistent with the requirements of the solicitation document and with applicable laws and policy. Under unusual circumstances advice and counsel may also be solicited from the CSU Chancellor's Office. After all factors have been analyzed, a final decision shall be issued in a timely fashion by the campus. The decision shall be in writing and shall be mailed or otherwise furnished to the bidder, vendor, or contractor in such a manner as to ensure receipt. The decision of the campus is final.

If, prior to the award of a contract, and in accordance with the posting of a "Notice to Award", any bidder files a protest on the grounds that the award is not in conformance with the provisions of the solicitation document, the contract shall not be awarded until either the



protest has been withdrawn or a decision has been reached by the appropriate campus authorities as to the action to be taken in response to the protest.

*PCC 10306, 12102(h); CSU Policy 212.*

2.66 Requests to Review Public Records: A vendor or other interested party may request to review a bid, a contract, or other public document. Generally, any record that is subject to review for the public is also subject to be copied for the public, per The Public Records Act. A request may be formal or informal and is to be accommodated in the most reasonable manner, including in advance an agreed reimbursement of costs to the campus (if applicable) and a mutually acceptable timeframe in which the review or copy work is to be accomplished. Any formal request must be forwarded to the Director of Procurement & Support Services, or designee, and be handled in accordance with the provisions within the Public Records Act.

The right of public review of records does not include any right to disrupt operations. Thus, while bids are generally not available for full review at the time of bid opening, they should be made available at a subsequent time. Likewise, work-in-progress, such as an evaluation committee's unfinished bid analysis effort, and bidder employee information or financial records, are not subject to a public request for review. However, any of these are subject to subpoena by a court.

True proprietary information submitted by a bidder may be protected from public review, but the mere fact that the information is marked by the bidder as proprietary does not necessarily make the information proprietary and protected by the Public Records Act. If material marked as proprietary is requested to be reviewed, the entity or individual claiming it to be proprietary shall be contacted and given the opportunity to demonstrate that it is proprietary. In contested cases, the Procurement Officer shall be advised. An opinion of the CSU General Counsel's Office may also be requested.

Procurement records being reviewed are to remain under the control of and in the presence of Procurement Office personnel.

*Gov.Code 6251 et seq.*

2.67 Contractual Language Composition: Quality contracts are those appearing to have a balanced combination of clear, simple, and concise wording along with an adequate apportionment of legal terms that can help protect the interests of all parties to the contract. Contractual language must always include the basic elements of a transaction. Accordingly, it must satisfactorily answer the following questions:

- a. Is the basic reason for the transaction clearly stated?
- b. Are all essential aspects of the transaction fully described?
- c. Is it made clear who shall perform the work?
- d. Have the expected standards of the work, goods, or services been conveyed?

- e. Have any conditions or restrictions of the transaction been stated?
- f. Has the location of the performed work or tendered service (if any) been identified?
- g. Is the effective term (period of performance) specified?
- h. Have the payment provisions been made clear?

Other important considerations include:

- i. A focus on the expected “end result” of the transaction, as opposed to an exhaustive elaboration on the means and methods by which the contractor is to achieve it.
- j. An accurate reflection—or preferably an attached copy—of the contractor’s offer (the response to the solicitation).
- k. The uniform application of an active rather than a passive “voice”, whenever practicable.
- l. The use of good grammar, sentence structure, punctuation, and just plain English.
- m. An avoidance of gender-specific language.
- n. An understanding of the differences—in contractual application—of the words “shall” (mandatory), “will” (predictive), “must” (obligatory), “may” (discretionary), and “should” (preferential).
- o. A statement of the total number of pages within the contract, along with an accurate & complete stated sequence of the pagination.

*CSU CRL.*

2.68 Contract Checklist: Prior to having a contract executed, a simple checklist can be employed as an added measure to ensure that nothing required by law, regulations, or policy has been overlooked under the terms & conditions or in the development and processing of the contract. A contract checklist for this purpose appears as an exhibit on the Chancellor’s Office Contract Services & Procurement website. The exhibited checklist can be applied to a variety of transactions including service agreements, some types of purchases, contract amendments, public works, and professional services related to public works, and leases.

*CSU CRL .*

2.69 Document Filing & Retention: Education Code section 89045 describes the general nature of the materials that must be retained and the time frame for preserving them (five years, or after a Trustees’ audit, whichever comes first). The Procurement Office generally maintains Purchase Orders, Service Orders, and Contracts (other than construction and related service agreements) for six (6) fiscal years (i.e., the one in which the document is dated, plus five (5) additional years). Closed documents that are more than two (2) years old are typically stored in facilities apart from the Procurement Office.

Closed documents are filed separately by fiscal year and arranged in sequential order by document number.

Multi-year orders and contracts are maintained in a separate active (current) set of files until all

that was ordered has been received. After such contracts are completed, they are integrated with other orders and contracts completed during the current fiscal year, and stored.

Construction and related service agreements are maintained in the Procurement Office until the corresponding projects are substantially completed, after which they are boxed separate from all the other closed documents and shipped off-site for storage for a period of ten (10) years.

*Ed Code 89045; Code of Civil Procedure 337; CSU Policy 207.*

2.70 Internal Compliance Audits: At least once every five years the Trustees' Internal Audit staff is required to perform audits of the activities of the CSU and its campuses. These activities include purchasing, contracting, leasing of CSU property, property management, and other support services generally under the direction of the campus Procurement and Support Services Officers. To ensure compliance with all applicable codes, regulations, and policies, the Procurement Officer provides or makes available to the auditors all local policies, procedures and descriptions of operating control mechanisms, and any files, documents, records, or reference materials, that may be requested during the course of these audits.

*Ed Code 89045(c)(d); CSU Policy 211.*

2.71 Procurement Office Budgetary Savings: Procurement Office staff members who process requisitions routinely are to strive to achieve budgetary savings for the requester and for the campus in general. Various ways are available to accomplish this, including (1) obtaining a commodity or service at a lesser cost from a provider not shown on the requisition, (2) negotiating for a lower price from a suggested provider, (3) using available master agreements, and (4) establishing blanket orders for high volume acquisitions.

2.72 Campus Unexpended Budgetary Savings : Year end unexpended budget balances from State General Fund appropriations may be carried forward and made available for new encumbrances on campus for an additional six months only (excluding the current fiscal year). By December 31 of each year, all encumbrances must be released and the unspent monies transferred to the CSU Chancellor's Office for return to the State Treasurer's Office. With the approval of the Associate Vice President or Vice President any funds that were encumbered or accrued and then failed to materialize or were cancelled during the prior fiscal year balances may also be "re-appropriated" to other general fund program accounts.

2.73 Recurring Reports on Procurement Activities: Regular reports are often required by outside entities such as State control agencies, the legislature, and the Chancellor's Office. These include recycled product and bleached paper acquisitions, small business contract awards, and disabled veteran business enterprise contract awards. The Procurement Office designates specific staff members to coordinate the scheduling and completion of such reports to assure that they are filed on schedule and are as accurate as they can be.

2.74 Address Errors on Invoices : Vendors and service providers sometimes send invoices to

the Procurement Office instead of Accounts Payable. Normally, the Procurement Office simply re-routes them to Accounts Payable and advises the vendor of this mistake (it is a violation of acceptable internal control procedures for a procurement office to handle invoices). However, if the vendor or service provider continues to mis-route its invoices after being advised, the Procurement Office may return the invoice advising that a disbursement will not be forthcoming until the invoice is properly addressed.

**2.75 Bid Openings, Job Walks, Pre-Bid Meetings:** The Procurement Office may include in any formal bid solicitation document a statement that affixes a scheduled time and place for a public bid opening intended to result in the award of a contract or purchase order. If such a bid opening is scheduled, it is imperative that only those bids received prior to the time of the scheduled bid opening be considered for the award. Confidentiality shall be maintained regarding each bid until the public opening and reading takes place. For RFPs, confidentiality shall be maintained until the selection of the apparent best proposal is made and announced. After the bid opening (or the RFP selection), all bids or proposals shall be made available for public inspection except for any documents designated or determined by the campus to be confidential in nature—using U.S. or State Privacy laws and/or regulations as the guidelines.

To assist potential contractors or service providers in making informed decisions related to their bids, a site visit to participate in a job walk or pre-bid meeting may be announced by the Procurement Office. Such a job walk or pre-bid meeting shall be deemed either required or optional. If participation in the event is required, only those potential bidders who attend the event may submit bids.

*CSU Policy 302, 402.*

### **Section 3 Requirements Specific to Commodity Transactions**

In addition to the special requirements contained in this Section 3, requirements in Section 2 also apply to the procurement of personal property.

*PCC 10295, 10430(a); Ed Code 89036; CSU Executive Order 667, 775; CSU Policy Sec. 300.*

**3.01 Informal Bidding for Orders Less Than \$50,000:** Competition is not required for commodities on informal (non-bid) acquisitions of an amount less than \$50,000 unless the campus Procurement Office determines that competition is necessary to develop sources, validate prices, or for other sound business reasons. Whenever possible, efforts shall be made to secure quotations and develop sources from small businesses and disabled veteran business enterprises.

*PCC 10301; CSU Policy 301.*

3.02 Formal Bidding for Orders of \$50,000 or more: Except in cases where it has been determined that (a) only one source or that only one brand or trade name of a commodity will properly meet the needs of the CSU or (b) if the commodity is to be purchased from a certified Small Business at a cost estimated to be at least \$50,000 but less than \$100,000 (and at least two quotes from Small Business firms have been obtained), all purchases of \$50,000 or more (excluding sales tax and shipping costs) must be formally bid and awarded to the lowest responsible bidder meeting specifications.

The California State Contracts Register (CSCR) shall be utilized for advertising purposes and vendors expressing interest in furnishing the commodity shall be tendered a copy of the bid solicitation document. Newspapers of general circulation, trade journals, and focus media may also be utilized for advertising purposes. Advertisements shall include at minimum a brief description of the commodity, the bid submittal deadline, the bid opening date, and the location where complete copies of the bid solicitation document can be obtained.

If the bid solicitation document contains a requirement for a formal bid opening, or if any potential bidder so requires one, sealed bids shall be publicly opened and read at the date and time specified. After bids are opened, they shall be made available for public inspection. Bids received after the closing date and time shall not be accepted. As soon as practical after the bid opening, the Procurement Office shall begin the evaluation process to determine the lowest responsive and responsible bidder, in accordance with the criteria for evaluation as stated in the bid solicitation document.

If the apparent lowest bid does not comply with the bid requirements, it must be rejected. If the award is not to be made to the lowest bidder, the campus must notify such bidder at least 24 hours prior to making the award to another bidder. In calculating the 24-hour period, Saturdays, Sundays, and legal holidays shall be excluded.

If prior to the award being made, any bidder who has submitted a bid files a protest contending that he or she is the lowest responsible bidder meeting specifications, the award shall not be made until the protest has either been resolved or withdrawn.

All bids may be rejected whenever it is determined to be in the best interests of the campus.

*PCC 1103, 10301-10306; CSU Policy 302.*

3.03 General Provisions for Bidding: There are specific minimum terms and conditions (referred to as "General Provisions" by the CSU) to which a vendor or bidder must agree in order to sell products to the State or the CSU. These are displayed as CRL Exhibits on the Chancellor's Office CS&P Internet website <http://www.calstate.edu/csp/>. The exact wording of these Provisions has been prescribed by the Office of General Counsel and may not be altered without pre-approval from that Office. The Provisions that are applicable to a given acquisition must become an integral part (whether referenced or stated in print) of every bid solicitation issued. Many of these provisions are pre-printed as "Purchase Order Instructions" on the

standard P.O. or referenced on an Internet website. For any given bid solicitation, additional provisions may be added whenever needed, and some of the General Provisions in the Exhibit selected for use may be deleted if they are not applicable. However, none of the General Provisions that appear on the set selected for use may be altered, and none that are required under statute or State regulations may be deleted.

*PCC 10307; CSU CRL.*

3.04 Posting of Solicitation Notices (Commodities): Public notice of the intent to formally purchase on the open market shall be posted in a location easily accessible to any bidder who may wish to participate in the bidding. The Notice is to be posted for a period of at least seven calendar days in advance of the bid opening. Complete copies of the bid solicitation are also to be maintained in the campus Purchasing Office and made available to any bidder upon request. The solicitation notice may also include an announcement in an appropriate newspaper or trade journal, including a brief description of the commodity, the closing date and time for bids to be received, and the location where complete copies of the bid documents may be obtained.

*PCC 10302, CSU Policy 302 .*

3.05 Office Supply Orders: A full line of office supplies is available through a CSU multi-campus agreement, with 24-hour daily delivery service. Departmental requesters are provided with computer-accessed catalog ordering and a direct ordering link with the vendor. Direct payments may routinely be made by the requester via the campus -managed procurement credit card program. When supplies are requested that are not available from the current contracted vendor, an electronic or paper requisition may be transmitted to the Procurement Office and the request filled by an alternate supplier. However, if the requested supplies are available under the multi-campus agreement, that source shall be explored first.

3.06 Orders to State Stores : Requisitions for supplies and other items that are carried by State Stores (a Division of the State Dept. of General Services) should be routed via the appropriate order form to State Stores by those in the Procurement Office who process requisitions, whenever such routing is justified by cost savings and the order cannot be filled under a Master Agreement issued either by the CSU or by the campus.

3.07 Orders to Bookstore: When a requisition contains items that cannot be furnished under CSU or Campus Master Agreements, placement of the order with the bookstore (a non-State entity) becomes a viable option. Orders that can be fulfilled by the bookstore are not subject to competitive bidding since the transportation cost, delivery time, and convenience are factors that need to be considered. For formal orders, the bookstore may also be invited to bid for the requested product or service whenever it is available from multiple sources. Requisitions routed as orders to the bookstore shall clearly specify how delivery is to be made: If the items are to be delivered to Central Receiving the correct FOB designation on the order is "Destination Prepaid." If the items are to be picked up by the requester, the correct FOB designation is "Pick-up by Campus." Some campus bookstores also accept campus procurement credit cards

in payment for their merchandise.

3.08 Restricted Purchases : The purchase of certain products and substances in general is expressly prohibited by the university. Authority to purchase certain other items is restricted to designated offices and/or individuals. The Procurement Office periodically distributes lists of these items and issues notices of other items being added to the list or (occasionally) items being removed from the list. Some of these items that are prohibited or restricted include, but are not limited to, live animals, two-way radio equipment and licensed frequencies, fire extinguishers, radioactive materials, X-ray Machines, hazardous substances such as solvents, toxic materials, and chemicals, ethyl alcohol, narcotics and dangerous drugs, firearms and other weapons, precious metals, and explosives.

*CSU Policy 205.*

3.09 Direct Receipts of Commodities by Requesters: Requesters receive items directly from a vendor in two (2) ways: (1) Requester or requester's department picks up the item, (2) Vendor delivers directly to the requester's department without going through Central Receiving. The requester or requester's department may pick up an item directly from a vendor whenever such action is appropriate, but the pick up must be denoted on the confirming requisition submitted to the Procurement Office as "FOB: Pick-up by campus." Pick-up notification is required whether the vendor is an on-campus, or off-campus vendor. Failure to make this notation can result in either a non-shipment or a duplicate shipment of the item. Whenever the requester or requester's department receives the item directly, Central Receiving must be immediately notified of the receipt. A failure to notify can result in a late payment to the vendor and a late payment penalty charge against the university.

3.10 Multiple Requisitions Merged as a Single P.O.: Two or more requisitions from a given campus department shall, when required or when deemed practicable, be merged into a single purchase order. This policy is intended to cut administrative processing expenses. Multiple requisition numbers may be combined on a purchase order that is initiated automatically within the electronic purchasing system by the Procurement staff member who is processing this group of requisitions.

3.11 Vehicle Purchases: In addition to the normal requirements for purchasing any kind of State personal property, the acquisition of new or used motor vehicles for campus use necessitates additional registration and certification procedures, along with a prior approval by the fleet administration office. Registration and certification procedures are specified within the contents of the California Vehicle Code sections 4000-6200. It is also campus policy to purchase new vehicles utilizing State contracts negotiated by the Department of General Services (DGS) whenever it is practical. Exceptions may be made on the basis of an emergency or the availability of a more favorable price for a vehicle that closely approximates the specifications of the vehicle for which the State is under contract. When a State contract is not used, vehicles shall be procured by a method that documents reasonableness of price. This may be via solicitation of bids, or by the use of reciprocal "cooperative" contracts executed by other governmental or public entities. All campus vehicle purchases where a State contract is

not used shall be approved by the Procurement Officer.

*Vehicle Code 4000-6200; CSU Policy 303.02.*

3.12 Hazardous Materials: Purchases of hazardous materials are restricted by the university to those offices and individuals only that are specifically authorized to do so. The Hazardous Substances Information and Training Act in the California Labor Code specifies that purchase orders for chemicals, solvents, or other products that may contain any kind of hazardous material include a vendor requirement to furnish a Material Safety Data Sheet for the commodity being purchased.

*Labor Code 6360-6399.7; CSU Policy 303.03.*

3.13 Library Materials and Information: Educational materials and information access resources related to campus library services may be purchased without advertising for, (or soliciting) bids. Such materials and resources include books, periodicals, computerized information for library use, educational films, audiovisual materials, test materials, workbooks and instructional computer software. Requesters are encouraged to solicit competitive bids on such materials and resources whenever practical so that opportunities are realized to optimize potential cost savings and benefits to the campus.

*CSU Policy 303.04.*

3.14 Prohibition on Commodities Produced by Slave Labor: Every contract for the procurement of State or campus equipment, materials, or supplies, other than those related to public works contracts, shall specify that no foreign-made equipment, materials, or supplies furnished to the State or campus pursuant to the contract may be produced in whole or in part by forced labor, convict labor, or indentured labor, under penal sanction. The contractor (or vendor) shall agree to comply with this provision of the contract (or purchase order).

*PCC 6108; CSU Policy 303.05.*

3.15 Recycled Products : Campuses shall establish purchasing practices that assure, to the maximum extent economically feasible, the purchase of materials, goods, and supplies that are recycled or have recycled material within their content. Fitness and quality being equal, purchase preference shall be given to recycled products whenever such products are available and the cost of such products is no greater than that of their non-recycled counterparts.

The detailed requirements for the CSU Buy Recycle Campaign are contained in the CSU Buy Recycle Handbook. The Buy Recycle Handbook, Buy Recycle certification forms, Buy Recycle report forms and a list of qualified vendors can be found at CSU's Buy Recycle web site <http://www.calstate.edu/Csprecycle/recycle.shtml>.



## Campus Responsibilities:

- a. Purchase Recycled Content Products (RCP) instead of non-Recycled Content Products (RCP) if fitness and quality are equal and the RCP is available at no more than the total cost of the non-RCP. However, campus procurement officers shall allow a price preference for recycled paper and tire derived products.
- b. Require all contractors to certify the recycled content of all RCP purchased. For all products, contractors shall be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer and secondary material in the materials, goods, (or supplies) provided or used. This certification shall be furnished under penalty of perjury.
- c. Attain the RCP procurement mandates. Campus procurement offices shall strive to meet or exceed the legislative goals and timetables prescribed by the California legislature for the acquisition of recycled products.
- d. Submit Buy Recycle procurement reports annually. Buy Recycle Reports are due to the Office of the Chancellor no later than August 15 of each year.
- e. Establish purchasing practices that ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded.

*PCC 10308.5, 10354, 10860, 12150-12226; CSU Policy 235.*

3.16 Purchases of Paper Stock: For the acquisition of recycled paper products, campuses shall abide by the same laws and policies established for all other recycled product acquisitions in addition to the specific requirements for paper as stated in PCC 10855.

CSU supports the intent of the State legislature to specifically give preference, wherever feasible, to the purchase of paper products containing recycled paper. To encourage the use of post-consumer material in recycled products, campus specifications require recycled paper product contracts to be awarded to the bidder whose paper product contains the greater percentage of post-consumer material if the fitness and quality and price meet the State's requirements.

*PCC 10855-10860, 12160-12164.5; CSU Policy 235.*

3.17 Two and Three-Way Matching of P.O. Copies: The matching of purchase order and invoice copies is one of the basic and routine steps in the process of ordering and paying for acquisitions. In essence this step is designed to assure that delivery has been made, that the items received are the items ordered, and that the price is correct, prior to payment being remitted to the vendor. The three entities normally involved with this process are the Procurement Office, Central Receiving, and Accounts Payable. Accounts Payable, since it receives the invoice from the vendor, performs a three-way match of the invoice to (1) its copy of the purchase order, and (2) an electronic receiving record or copy of the purchase order from Central Receiving showing that the item has been received.

An authorized confirming order made by a requester, where the item is picked up directly from the vendor, does not require a three-way match of purchase order copies to the invoice since the item is not delivered to central receiving by the vendor. It requires only a two-way match of the invoice against its copy of the purchase order. Accounts Payable must be advised that the goods or services have been received. This is normally done by written correspondence acknowledging the receipt and acceptance of the order, or by approving & signing the invoice.

The designation of a proper “purchasing type” code on the order is partly dependent upon knowing whether the item being purchased is being routed through Central Receiving or has been picked up by (or delivered directly to) the requester. It is important that the confirming order requisition contain this information; otherwise a risk is introduced that the order will be duplicated (and possibly paid for twice) or that the vendor may not receive payment at all.

3.18 Property Accounting Capitalization & Inventory: This function is generally performed by the campus Property Management staff. There are certain items of State tangible property that are required to be shown on the accounting records as capitalized assets and therefore be included in the campus’s financial balance sheet. Such items (with some exceptions for items identified as “sensitive” under campus policy) must meet the following three criteria to be so included:

- a. Have a normal useful life of at least one year,
- b. Have a unit acquisition cost of at least \$5,000, and
- c. Be used to conduct State business.

Sensitive items may include (but are not necessarily limited to) desktop computers, printers, monitors, cameras & video equipment, and valued high-risk items.

As property items are purchased that meet these criteria, they are identified as capitalized property by a process called “tagging.” The tagging of these items with a campus identification number helps Property Management to keep inventory records of all capitalized property on campus. It also permits a means of conducting periodic audits (reconciliation) of property holdings on the campus, as well as to help prevent losses. Inevitably, some losses of capitalized property do occur and whenever this happens the loss is recorded by a process that is called a “property survey.” When a property item is to be removed from the inventory listing, a “Request for Property Survey Report” must be submitted by the custodian to Property Management for processing. The completion and filing of a property survey form by Property Management removes the item from the campus’s list of capitalized assets and financial records.

Transfer of property between two departments is accomplished by the preparation of a “Transfer of Equipment” form. This form must be signed by authorized persons from both departments to be valid. Once completed, the form is forwarded to Property Management for final processing.

A campus-wide physical inventory audit is performed annually for all capitalized property,

including sensitive items. To initiate the audit inventory process, Property Management contacts the chief administrator of each campus department to arrange the time period in which the task is to be accomplished. There are two types of audits that are generally authorized for use:

- a. Assisted inventory audit—one that is performed under the direction of Property Management and with full assistance from the audited department's personnel as needed.
- b. Self-inventory audit—one that is performed wholly by the audited department, using the audited department's personnel and a bar code scanner to collect the audit data. The data is then delivered to Property Management for completion of the process including substantiation of reports on lost or missing items, and recording of the completed data to the campus asset and accounting records.

At the conclusion of a physical audit, any CSU or public property that is determined to be missing or presumed stolen must be reported to the Office of Public Safety, with a copy provided to Property Management. The report copy must then also be reviewed by the Property Review Board to determine whether due care and diligence were exercised by the department having custody of the property in protecting that property from loss.

Property items that are excess to campus needs and are not considered probable prospects for campus re-utilization are made available to the public and campus community via a competitive bid process conducted as necessary. Sealed bids must be tendered to the campus during the sales period to help assure fair and equitable opportunity for interested parties. Each sale is advertised in local newspapers, the campus bulletin, and flyers that are disseminated throughout the campus. Property Management (or a property custodian) establishes a minimum bid for each item proffered for sale. Prospective buyers are advised as to how, when, and where they may view items prior to submitting their bids. All bids must be tendered and received by the campus prior to a predetermined and announced deadline. Equipment may be tried out and tested on the premises, but all sales are concluded on the basis of "AS IS." The highest bidder is notified, but if the bid is declined the offer may then go to the second highest bidder. Unless the bidder demonstrates a re-sale license, the usual State & local sales tax must be applied to the final bid price. Only cash, money orders, or certified checks are accepted. Personal checks are not accepted. Custodians of excess campus property wishing to include items in one of the annual sales may make arrangements by contacting either the Procurement Office or Property Management.

*Civil Code 2080.9; CA Code of Regulations, Title 5, Sections 42375 & 42376; CSU Executive Order #60; CSU Policy 601.*

3.19 Property Review Board: This is a body of campus officials that is collectively assigned the responsibility for assuring the integrity of changes made to the campus's property records. The Board membership usually consists of employees initially appointed by the Vice President upon the recommendation of other campus officials—ordinarily from the ranks of institutional and

instructional Division Executives. The members serve for indefinite terms, until or unless replaced by other appointees. Additional members are added whenever necessary or appropriate.

The Board reviews Surveys, Transfers, Donations, and other transactions as necessary to ensure that the best interests of the State, CSU, and campus are served. It convenes as necessary and normally at the call of the Procurement Officer. It may conduct all necessary business without formally convening (i.e., transactions may be routed through appropriate members). Action may be taken or a decision rendered upon common resolution of a minimum of two (2) Board members, unless a formal Board meeting has been convened and then a majority of the members must agree to the action or decision.

Unusual requests for deletions of property items from the inventory records are also examined by the Board, acting in conjunction with Property Management.

3.20 Missing or Stolen Property Items: The campus Office of Public Safety must be notified of any missing or stolen university property. The notification must be given by submitting a "Missing or Stolen Item Report" form (using the same reference number). This Report form must be submitted in addition to any other form that is submitted such as a "Police Report", "Incident Report", or "Property Survey."

3.21 P.O.s Designed for Ordering from Various Suppliers: Normally, one (1) purchase order should have one (1) vendor. The campus electronic purchasing system (computerized ordering) does not accommodate other methodologies of ordering. However, circumstances arise on rare occasions when a single order (of less than \$50,000) could be used for multiple suppliers in order to control administrative processing costs. An order for multiple suppliers becomes practical, for example, to arrange for small-item repair parts, artist's models, test proctors, and other frequently ordered small items or temporary short-term services. Whenever the need for such an order arises, the Procurement Officer must first be advised so that special arrangements can be made to encumber the total amount of anticipated expenditures under a single encumbrance and then to make payments to the individual suppliers as they become due. The multiple vendor order is called a "dummy order." It accommodates the electronic purchasing system's nuance of requiring one supplier only for each order.

3.22 Freight Shipment Charges: It is preferable that the cost of freight be integrated by the vendor as part of an item's cost that is shown on a purchase order. Under this arrangement there would be no separate freight billings and the items are designated F.O.B. Destination. When there is a freight bill to pay (either F.O.B. Shipping Point--Prepay and Add or FOB Destination—Prepay and Add), Accounts Payable will automatically pay it against the requester's funding if it does not exceed \$50 or if UPS is used. For non-UPS freight charges exceeding \$50, a separate freight bill must be in evidence before the charge can be paid. Optionally, a separate P.O. line item may be established on the P.O. and encumbered to pay for the freight if the cost is known in advance or is expected to exceed \$50.00. As a State agency, the CSU may

take advantage of any State agreements established for the purpose of cutting costs via reduced shipping rates.

Outgoing shipments from the campus are rarities, but there are times when they must be made. While the campus Central Receiving area is neither equipped nor staffed to regularly arrange for and process outgoing shipments, it can act as a holding area where items may be dropped off and held until a carrier or trucking line arrives to pick them up. Five days advance notice should be given for any holding request made, so that space can be arranged adequately and a proper record can be made in advance to help avoid losing track of the item(s). A "Request for Outgoing Freight" form must accompany all shipments. For materials that were shipped wrong, damaged, or over-shipped by a vendor, the vendor must be contacted to furnish a Return Material Authorization (RMA) form prior to shipment being made. The RMA also entails the furnishing of call tags to identify each package being returned. If Facilities is requested to move the item(s) to the Central Receiving area, a Work Order form must be completed and submitted 5-7 working days in advance of the date that the move is to be performed. Special situations with extenuating circumstances can be handled on an emergency basis.

#### Section 4 Requirements Specific to Contracts and Service Orders

In addition to the special requirements contained in this Section 4, requirements in Section also apply to the procurement of contractual services and service orders.

This Section shall apply to the following kinds of contracts:

- Service Agreements.
- Independent contractor and consulting services.
- Service Orders.
- Equipment rental or Lease Agreements.

This Section shall not apply to the following kinds of contracts:

- Public Works Agreements.
- Professional Services Agreements in connection with a public works project.
- Leases, licenses, and sales, purchases, or exchanges of real property.
- Commodity purchases (goods, supplies, or equipment).

*Ed Code 89036, 89038, 89048(d); CSU Executive Order 775; Labor Code 1771.5; CSU Policy 400.*

4.01 Informal Bidding for Services: Competition is not required for services on transactions of an amount less than \$50,000 unless the Procurement Office or the requester determines that competition is necessary to develop sources, validate prices, or for other sound business

reasons. All transactions made under the CSU procurement authority shall, however, be designed to encourage active competition among all those seeking to become providers of services to the campus. Efforts shall also be made to secure quotations and develop sources from small businesses and disabled veteran business enterprises.

Acquisitions that are estimated to be greater than \$50,000 and less than \$100,000 may be awarded to a Certified Small Business, as long as price quotations have been obtained from two or more small businesses.

*CSU Policy 401.*

4.02 Formal Bid Requirement Threshold of \$50,000 or more: Except in cases where it has been determined that there is but one source that can properly meet the needs of the campus, a contract estimated to cost \$50,000 or more must be formally bid and awarded to the competitive bidder who offers the best value to the university. Bids for services in excess of \$50,000 shall also be advertised in the California State Contracts Register whenever possible. All transactions made under the CSU procurement authority shall be designed to encourage active competition among contractors wishing to become providers of services furnished to the CSU. Efforts shall be made to meet the goals established for Small Businesses and DVBE firms.

To promote fair and open competition each formal solicitation for services must attempt to secure at least three competitive bids or proposals. Exceptions to this requirement are following:

- a. Where a sole source for the service has been justified (see Section 2.02).
- b. Where an emergency necessitates a contract for the immediate preservation of public health, welfare, or safety, or protection of State property.
- c. Where advertising and solicitation efforts have resulted in fewer than three responses.
- d. Where the contract is with another state agency, the federal government, a local governmental entity, or an auxiliary organization of the CSU (proviso—that such a contract is not used to circumvent the standard competitive bidding requirements).

*CSU Policy 402.*

4.03 Posting of Solicitation Notices (Services): Public notice of the intent to formally request services from the open market shall be posted in a location easily accessible to any bidder who may wish to participate in the competition for a contract award. The campus and Procurement Office websites are such suitable locations. Complete copies of the bid or proposal solicitation document must be maintained in the Procurement Office and made available to any interested bidder upon request. The solicitation process may also include an announcement in an appropriate newspaper, trade journal or focus media, including a brief description of the work to be performed, the closing date and time for bids or proposals to be received, and the location where complete copies of the solicitation document may be obtained

*CSU Policy 402.*

4.04 Standard Contracting Forms: There are standard CSU contracting forms available for use, and for a variety of functional applications. These may be viewed and reproduced for use from the CS&P Contracting Resource Library on Internet website <http://www.calstate.edu/csp/>. If there is any question regarding the proper form to use for a specific application, it is advisable to contact the CSU Office of General Counsel to obtain the answer. Using the wrong form or preparing a modified form to try to suit the occasion can lead to potential problems, including legal ones. Deletions, additions, or significant variations from the format or content of a standard form developed and approved for system-wide use are not recommended without prior review by the Office of General Counsel. CSU campuses use a common form for the execution of most contracts. This form is patterned after the Standard Agreement Form 2 that is used by all California state agencies, but contains terminology in it that is more specific to the policies, terms, and conditions of the Trustees of the CSU. It is referred to as the CSU Standard Agreement.

*CSU Policy 409.*

4.05 General Provisions for Services : There are specific minimum terms and conditions (referred to as “General Provisions” by the CSU, but sometimes called “Administrative Requirements”) to which a contractor must agree in order to provide services to the State or the CSU. These are displayed as Exhibits on the Chancellor’s Office CS&P Internet website <http://www.calstate.edu/csp/>. The exact wording of these Provisions has been prescribed by the Office of General Counsel and may not be altered without pre-approval from that Office. The Provisions that are applicable to a given acquisition must become an integral part (whether referenced or stated in print) of every contract issued. For any given contract, additional provisions may be added whenever needed, and some of the General Provisions in the Exhibit selected for use may be deleted if they are not applicable. However, none of the General Provisions that appear on the set selected for use may be altered, and none that are required under statute or State regulations may be deleted.

*PCC 10351(2); CSU Policy 410; CSU CRL.*

4.06 The Service Order: The Service Order may be used to obtain various kinds of services on an informal basis (the cost must be less than \$50,000) whenever it is determined that there is no need to require both parties to sign a formal agreement (e.g., where minimal legal liabilities exist), or where timing or circumstances make it impractical to employ a formal agreement (such as emergency repair needs).

*CSU Policy 406.*

4.07 Contract Language Requirements : Terms and conditions beyond the minimum standards (CSU Standard Agreement format and General Provisions) are incorporated into a contract whenever there is concurrence between the campus and the contractor that such terms and conditions are necessary to convey a clear understanding of each party’s role, its obligations,

and the parameters in which the activities must be carried out, under the contract. Such additional terms and conditions, whether proposed by the campus or by the contractor, must first be determined to be in concert with all applicable laws, regulations, and policies prior to the contract being executed.

Some guidelines useful in the preparation of contract language are as follows:

- a. Use the correct standard form.
- b. Be consistent in the use of terminology throughout the contract (e.g., “shall” and “will” do not mean the same thing; nor do “vendor” and “contractor”; if campus name is used one place, do not use “campus” or “university” in another; use either the word “Agreement” or “Contract”, but not both when referring to the document at hand).
- c. Active voice is usually preferable to passive voice, and mixing the two together in the same contract is unacceptable.
- d. Clarity and simplicity are paramount.
- e. Exhibits, attachments, addenda, and other parts of a contract must be clearly marked, sequentially arranged, and referenced accurately throughout the text.
- f. State the payment terms clearly and unambiguously regarding when, how, and to whom they apply.
- g. Two or more persons should proofread or edit the contract carefully after it has been drafted.

4.08 Commencement of Work Clause: Except in cases of emergency to protect human life or State property, work shall not commence on any contract until the contract has been approved by the appropriate authority. Any work performed by the contractor before the date of approval can be considered as having been done at the contractor’s own risk, and potentially as volunteer work.

*CSU Policy 412.01.*

4.09 Compensation (Pay) for Contracting Work: Payment and consideration provisions depend on the complexity and difficulty of the project, the current rate for similar work both within and outside State service, and the qualifications and experience of the individual(s) or firm awarded the contract. Contracts will list the rate of compensation to be paid for all consideration and other expenses. Reimbursement of transportation costs and an allowance for per diem (while traveling) should be in conformance with the CSU reimbursement policies applicable to CSU employees.

*CSU Policy 412.02.*

4.10 Progress Payments : A “progress payment” is defined as any partial payment of the contract price during the progress of the work. If a provision in the contract calls for progress payments to be made, they shall be made at clearly identifiable stages of progress, and be based upon written progress reports submitted with the contractor’s invoices. Progress payments shall not be made in advance of services rendered.



*PCC 10346; CSU Policy 412.03.*

4.11 Contracts with Local Government Entities: Where one of the contracting parties is a county, city, district, or other local public body, the contract shall be accompanied by a copy of the resolution, order, motion, or ordinance of the local governing body by law having authority to enter into the proposed contract, approve, and to authorize its execution. The campus may wish to have such a contract undergo a review by the Office of General Counsel.

*CSU Policy 703.*

4.12 Contracts with State Boards and Commissions: Contracts proposed by State Boards and Commissions in excess of \$1,000 must be accompanied by copies of the resolution, order, or motion authorizing execution of the agreement, unless the campus previously has been furnished with evidence of the authority of the person executing the contract, or the person has statutory authorization.

*CSU Policy 704.*

4.13 Interagency Agreements : An Interagency Agreement is a negotiated contract between two State agencies (or an agency and the CSU) for the purpose of conveying one party's services to the other party for a price, for exchanged services, or for some other form of authorized consideration. Generally, it may contain specific terms and conditions to which each agency has agreed, but is left devoid of indemnification clauses, hold harmless statements, and other legal protective devices routinely employed by the State in contracts with non-State entities. All Interagency Agreements exceeding \$10,000 must contain a provision that the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of the contract (Gov. Code Sec. 8546.7).

*Gov. Code 11256-11263, 8546.7; CSU Policy 701.*

4.14 Intra- Agency Agreements & MOUs: Campuses may enter into agreement with one another for the purpose of providing reimbursed services, or an exchange of services, through the use of the standard CSU form "CSU Project Expense Agreement" or a "Memorandum of Understanding." Both of these transaction instruments are exhibited on the Internet CS&P website <http://www.calstate.edu/csp>.

*CSU Policy 702.*

4.15 Contracts with Auxiliary Organizations: The campus may enter into non-competitive contracts with its auxiliary organizations via the use of Standard Agreements, Service Orders, or other standard CSU transaction instruments as appropriate. However, it is incumbent upon requesters for these services to be satisfied that the cost is competitive with that found in the

open market for similar services.

Contracts between State agencies (including CSU campuses) and campus auxiliary organizations are exempt from the State's general requirement of competitive bidding prior to making award, as per PCC 10340(b)(3). The purpose of this exemption is to accommodate contracts that provide services related to research, workshops, institutes, and other educationally-related studies or projects and are generally available only from institutions of higher education or their research faculty and staff.

Where the primary responsibility for fulfilling the contractual obligations for another State agency will rest with an auxiliary organization (as opposed to the campus State-side administration), the contract must be between the State agency and the auxiliary organization—usually in the form of a Standard Agreement. A contract between a State agency and an auxiliary organization is not an interagency agreement. Where the primary responsibility to administer and fulfill the obligations of a contract with another State agency rests with the campus State-side administration (as opposed to its auxiliary organization), the campus shall execute an interagency agreement with the other State agency and then arrange its own contractual relationship with its auxiliary. In this type of arrangement, there are no legal obligations between the other State agency and the auxiliary.

*Ed Code 89900 et seq.; PCC 10340(b)(3); Title 5, Sec. 42400-42700; CSU Executive Order 750, CSU Policy 706, 707.*

4.16 Signatures for Processing Contracts: The Procurement Office and Accounting Office maintain lists of authorized signatures for purchase requests and other contractual instruments. To ensure that the dollar amount and funding source shown on the instrument (including the underlying requisition) are correct and adequate prior to its execution, both shall be carefully reviewed by the Procurement Office prior to further processing. The instrument is next routed to the Accounting Officer for funding certification and signature. After this, it is returned to the Procurement Office for delivery to the vendor or contractor. For contracts, leases, licenses, etc., a counter-approval and signature are required from the contracted party. The contracted party must then return the instrument to the Procurement Office for final signature, thereby completing its execution. If during the course of the reviews a funding or cost error is detected, the error must be corrected and the revised instrument resubmitted for signatures in the same order as before. Campuses may route agreements differently, depending on campus procedures, for approval and execution signatures.

4.17 Amendments to Contracts: Contracts (or Service Agreements) awarded on the basis of competitive bidding may not be modified unless (a) the contract, or the law governing the bidding, includes a provision for amending or modifying it, or (b) unforeseen additional work becomes necessary (as confirmed by the campus). Additional work as applied under (b) shall mean the same type of work that is specified in the existing contract or else work incidental to that specified in the existing contract but work that is necessary in order to complete the contract as originally specified.

*CSU Policy 405.*

4.18 California State Contracts Register: The California State Contracts Register (CSCR, and recently re-named ECSCR to denote that it is fully “electronic”) is a Department of General Services Internet publication that advertises for bids on service agreements and public works by category for State agencies (and the CSU). It provides an equal opportunity for all businesses to compete for a share of State contracts. It is promoted by the Office of Small Business Certification & Resources (OSBCR). Fees are exacted for the advertising services. It is the policy of CSU to advertise in the CSCR to every extent possible. Contract advertisements must be submitted to the OSBCR on Std. Form 815, “Advertising in the Contracts Register,” or be submitted electronically.

Each campus Procurement Officer must establish written criteria for use of the CSCR. Typically, criteria are to include:

- a. Types of contractual services and the monetary levels for which the Register will be used.
- b. Provisions for approval or any exemption from established criteria, such as emergency contracts, contracts with other public entities, or contracts where it is determined that the State’s best interests would be served better by exemption.
- c. Procedures for documenting justifications for not using the CSCR.

Exemptions from use of the CSCR. In addition to an exemption based upon a campus determination that its best interests would be better served without advertising in the CSCR, the following contracts are exempt from publication in the CSCR:

- a. Emergency contracts necessary for the immediate preservation of life or State property.
- b. Contracts for the work or services of a State, local, or federal agency.
- c. Services for which the State has entered into a master service contract.
- d. Refuse and/or sewage disposal contracts where there is no competition because the contractor is an authorized franchise dealer providing services to a specific geographical area.
- e. Contracts for medical care services with physicians, local community hospitals, and medical groups. (This does not include offsite laboratory services).
- f. Subvention contracts (non-discretionary grants) with a private or nonprofit entity for the purpose of providing services to the public or segments thereof.
- g. Maintenance agreements for equipment that is under warranty or while the guaranteed useful life period is in effect, or agreements where the campus has determined that a local distributor or branch is the only source for parts and service.
- h. Proprietary software contracts.
- i. Leases or rentals for use as examination sites.
- j. Entertainment contracts for State-sponsored fairs and expositions.
- k. Contracts for which only per diem and travel expenses are paid and there is no payment

for services rendered.

- l. Contracts solely for the purpose of obtaining expert witnesses for litigation.
- m. Contracts for legal defense, legal advice, or legal services.
- n. Contracts with business entities operating handicapped workshops that meet the criteria established by Section 19404 of the Welfare and Institutions Code.
- o. Contracts for architectural or engineering services.
- p. Contracts for Services of less than \$1,000.

*Gov. Code 14825; CSU Policy 403.*

4.19 Copier Services : Medium and high-volume copy services (along with other related operations) are generally provided by reprographic services and are available to all faculty and staff. These non-profit services are administered on a charge-back basis, thereby assuring that the program operation can be affordable yet partially self-supporting. High-volume photocopiers, offset and programmable presses, and high-speed duplicators are operated on site by skilled journeymen to accommodate State instructional, administrative, and auxiliary business needs. Low volume copy work (typically 1-50 copies) can often be accommodated with the use of smaller copiers in the custody of individual campus departments.

Campus departmental proposals to enter into a purchase agreement or lease of copy equipment, as well as the acceptance of a gift or donation of copy equipment must first be reviewed regardless of the funding source. This must be done prior to submitting a requisition to the Procurement Office. Advice and counsel can be provided to assure that the requester has as much information as is necessary about the expected volume, speed, and sizing requirements, maintenance & service needs, efficiency and durability of the equipment, operational costs, the potential suppliers, available prices and discounts, and other important information before the requester's funds are committed on a requisition.

Copier service for students, faculty & staff, auxiliaries, and the general public may also be available via another specialized program. This program is self-supporting and is typically administered jointly by the A.S.I. and the (stateside) Business or Administrative Division. It offers mailing & parcel post service as well as other services such as Notary Public certifications and bookkeeping & records maintenance to campus clubs, associations, and other independent entities. Its photocopiers are activated for use with the insertion of pre-purchased debit cards available at the facility either from a card dispenser or over-the-counter. These program copiers are situated on the ground floor of the University Union building.

4.20 Reprographic, Printing, and Binding Orders: Graphics exists to support the educational objectives of the campus and to enhance its institutional image through quality publications. Its array of services includes word processing, mail merge, desktop publishing, scanning, graphic design, printing, copy work, and binding services. It serves the entire campus community and relies partially upon scheduled charge-back fees to its users in offsetting costs. To assure that the services can remain cost-effective based upon high volume, their widespread and frequent use by campus employees on State business is strongly encouraged (as opposed to taking this

kind of work to outside providers). Jobs are requested using a special work order form—obtainable over the counter at the office. Reference to an authorized university account number is required for these services. Whenever the shop cannot provide the desired service, a requisition for off-campus services may be submitted to the Procurement Office for processing. Once approved, a request may still be subject to the CSU's competitive bidding requirements. The requester or the Procurement Office staff member who processes the requisition may also opt to contract with the Office of the State Printer (a Division of DGS), and without the solicitation of competitive bids, whenever it is determined that greater efficiency would be served by doing so.

*CSU Policy 705.*

4.21 Monthly Billing Cut-Offs : About one week prior to the end of each month, the campus Accounting Office closes its work-in-process activities for the month in order to accommodate monthly computer data reports for its financial system. Cut-off dates for processing transactions chargeable to a current month are established for all campus departments and programs, including the Department of Procurement & Support Services and all of its charge-back operations. Transactions submitted after a designated cut-off date must be charged to the subsequent month.

4.22 Moving Expenses: Operating policies and procedures that govern moving expenses and relocation allowances for newly recruited university personnel and active employees are maintained by designated offices within the CSU and campus. The Procurement Office involvement is minimal, normally limited to the placement of a standard agreement or service order with the household goods moving company that is specified on a departmental requisition. Negotiated system-wide Master Agreements for personnel relocation may be available for any given move and are encouraged to be used. Orders for moving expenses and relocation allowances are not subject to sole source justification.

4.23 Funding of Acquisitions: All requisitions that are intended to result in a procurement award must contain complete funding information. On the Procurement Office electronic purchasing system, the blank system form that appears on the computer screen provides funding data fields that are to be filled in by the preparer with the necessary funding data provided on the requisition. For campuses that utilize electronic budget checking, if the accounts identified have the necessary funds available for the intended acquisition, the system will automatically permit the requisition to be completed. For any hard copies of requisitions submitted to the Procurement Office, the funding data is further examined by the Procurement Office in order to verify the accuracy of the information. If a funding problem is identified on the hard copy, the requestor is notified and a revised requisition must be submitted.

4.24 Independent Contractors and Consultants : Service contracts between the campus and individual contractors (including "consultants") are useful for providing the campus with certain skills and working experience that may not be available from the ranks of existing staff for a particular task or that are inaccessible at the time the task is to be performed. Supporting

documentation for such contracts must confirm, however, that an independent working relationship will exist between the two parties for the entire term of the agreement. The following guidelines are provided to assist in the distinction between (a) an employer/independent contractor relationships vs. (b) an employer/employee relationship. These are based upon criteria used by the Internal Revenue Service, the State Employment Development Department, the California State Franchise Tax Board, and other public service agencies. The guidelines were summarized in State DGS Management Memo 95-18 entitled "Independent Contractor/Employee Payroll Taxes." They included the following:

- a. An independent contractor generally is engaged in a distinct occupation or profession, e.g., in the business of providing consulting or other services to the job being contracted.
- b. Independent contractors perform independently; whereas, under an employer/employee relationship the employer retains the right to direct and control the work being performed, as well as control over the details or techniques of the work.
- c. The working area, supplies, and/or equipment generally are not furnished to independent contractors.
- d. Compensation for independent contractors is reflective of the specific work accomplished; whereas, employment relationships are generally compensated by payment of a set sum by the hour, week, or month, based upon established hours of work. Employer benefits (sick leave, vacation, insurance coverage, etc.) do not accrue to independent contractors.
- e. The work being performed must not be of a type that is integrated into routine or ongoing employer operations.
- f. The employer must not make direct payments for business, per diem, or travel expenses incurred by the independent contractor.
- g. An employer/employee relationship exists when the worker can quit or be terminated at any time; whereas, an independent contractor is legally obligated for failure to complete the job unless the agreement is terminated.

Bids may or may not be solicited for an independent contractor depending upon (a) whether the cost of the contract is estimated to be \$50,000 or more, and (b) whether the proposed provider of the service is considered to be a sole (unique) source. If bids are not solicited, the requester for the services of a particular independent contractor must provide the contractor's social security number or federal tax i.d. number along with the other required information on the requisition before it is transmitted to the Procurement Office for processing. The Procurement Office ascertains from the Human Resource Services office that the proposed contractor is not an employee of the University. A contract shall not be awarded until this determination is documented.

An advisory must be submitted to the campus Human Resource Services (HR) office well in advance of the execution of any contract involving personal or other services (including consultancies) that are planned to exceed six months in duration. This policy is to help assure that required advance notification (often 120 days) can be issued to any collective bargaining organization that might be affected by such a contract. The terms and conditions of MOUs

with collective bargaining organizations vary from one group of employees to the next, so it is generally considered prudent to notify HR well in advance of the development of a personal services or consultancy contract, regardless of the perceived length of term for the appointment.

The following Public Contract Code restrictions (PCC 10410, 10411 -- as made applicable to the CSU by PCC 10340(a)) -- prohibit CSU employees and certain former employees from entering into contracts with the CSU as independent contractors or consultants:

- a. An active CSU employee may not contract on his or her individual behalf as an independent contractor with any state agency to provide services or goods.
- b. An active CSU employee may not contract or be employed by an entity that receives its funding from a state contract, unless required by his/her employment.
- c. For two years following retirement or separation from CSU employment, no former employee may enter into a contract in which he/she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract.
- d. For 12 months following retirement or separation from CSU, no former employee may contract with CSU if he/she were employed by the CSU in policymaking position in the same general subject area as the proposed contract within the 12 month period prior to his/her retirement or separation.

Excepted are contracts for expert witness services (testifying) and contracts to continue attorney services.

A "consultant" is a special kind of independent contractor. A "consulting services contract" is defined as an agreement with an independent contractor to have work performed that is advisory in nature, provides a recommended course of action or personal expertise, and results in an end product that is basically a transmittal of information, either written or verbal. Such a contract shall not include:

- a. Contracts with the federal government.
- b. Contracts with local agencies (as defined in Section 2211 of the U.S. Revenue and Taxation Code) as subventions to federal funds for which no matching State funds are required.
- c. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations (such as academic accreditations, program reviews, and other external evaluations).
- d. Contracts for public works architectural or engineering services.

Consulting agreements are subject to the same policies and procedures as service agreements in general. In addition, the following applies to the preparation of consultant contracts:

- a. Consulting contracts shall be executed on standard CSU contracting instruments.
- b. Appropriate consultant determination guidelines should be used and recorded.

- c. Consultant contracts should not be issued to University employees. The proposed consultant's social security number should not appear on the campus's list of active employees.
- d. A campus project manager shall be identified for each consulting contract. The project manager serves as the campus's primary point of contact with the consultant and shall approve all payments to the consultant.
- e. Payments to the consultant shall be based upon a scheduled deliverable or task which has an itemized cost and has been approved by the project manager. Payments shall not be made based upon the number of hours worked, and shall not be paid in advance of the services performed.
- f. If a "progress payment" has been requested, payment shall be based upon a written progress report submitted with the consultant's invoice. The campus shall retain at least 10% of the amount earned, pending satisfactory completion of the entire contract and the work evaluation of the consultant.

Two added special processing requirements to be performed whenever a campus contracts with an independent contractor serving as a consultant are:

- a. Conflict of Interest: If a consultant provides services for the preparation or development of recommendations for any actions required, suggested or otherwise deemed appropriate and which include the provision, acquisition or delivery of products or service; then the consultant must provide full disclosure of any financial interest including but not limited to service agreements, memos of understanding, and/or re-marketing agreements that may allow the consultant to materially benefit from the adoption of the recommendations.
  - 1. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.
  - 2. It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract when the contracting party knew or should have known that the disclosure was likely to cause harm.
- b. Testifying: When a consultant is retained as an expert witness in pending litigation, the rate paid must be consistent with the complexity and difficulty of the testimony to be given, the current rate for similarly qualified consultants, and the qualifications and reputation of the particular consultant. The contract must specify exactly what the consultant is to do—submit to depositions, testify in court, make other appearances, etc.

*Ed Code 89036; Gov. Code 81000 et seq., 82019; PCC 10410, 10411, 10426; CSU Policy 412.09, 412.10.*



4.25 **Illegal Immigrants Contract Prohibition:** Per Executive Order W-135-96 signed on August 27, 1996 by the Governor of the State of California, all State contracts must contain the following language: "If Contractor is a natural person, Contractor certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).

*Revenue and Taxation Code 3121(d), 6651, 6656, 6662; CSU Policy 412.11.*

4.26 **Risk Management & Liability Insurance Requirements:** As approved by the campus President, campus Risk Management Policy is specifically designed to identify and measure all types of risk to the campus, and to implement risk management techniques that are in harmony with the mission of the CSU and which do not interfere with the educational and administrative responsibilities of the campus. While all administrative personnel and faculty are responsible for implementing, supporting, and enforcing the campus risk policies, certain campus offices are charged with providing advice, information, and activity coordination related to the subjects of risk management and liability insurance.

Risk Identification and evaluation questions that should be considered in determining what risks and subsequent losses could arise from the activities contemplated under the contract should include, among the following:

- a. What activities will take place?
- b. Who could be harmed?
- c. What property could be damaged and how severely?
- d. What is the maximum likely loss for each activity?
- e. Is there a possible pollution exposure?
- f. Are crowds or bystanders/passersby likely to be involved?
- g. Will inherently dangerous activities be involved?
- h. How likely is it that the University will be a defendant in the event of a loss?

After consideration of these factors, the campus may amend the standard practices described herein to use either higher or lower limits.

**Hold Harmless Provisions:** Many alternative hold harmless provisions are possible, with each alternative having a different purpose and potential risk transfer variant. In addition to minimum standards for insurance requirements, this policy establishes the approved hold harmless provisions based on the risk assessment of the contract category. Modification to hold harmless language in contract negotiation is a crucial part of the risk transfer process and should be undertaken only with appropriate review and counsel.

A complete set of approved model terms and conditions for non-public works agreements is available at (Contract Resource Library) [www.calstate.edu/CSP/](http://www.calstate.edu/CSP/) containing approved hold

harmless provisions. General provisions for public works contracts including hold harmless provisions for construction and architect and engineering professional services can be found online in the CSU/CPDC resources.

In some instances, a no “hold harmless” clause approach may be appropriate for low liability activity for activities critical to CSU.

**Additional Insured Endorsements:** Under the terms and conditions of a contract or agreement for services, the contractor, consultant, or vendor must be required to show evidence of adequate insurance coverage by furnishing to the California State University a certificate or certificates of insurance that include additional insured endorsements. All certificates of insurance issued to the University require the following:

- a. Provide for thirty (30) days advance written notice to the University of cancellation of any of the insurance coverage.
- b. Provide for Acceptability of Insurers rating, AM Best – AVII or equivalent unless otherwise agreed to by the University.
- c. Name the State of California, the Trustees of the California State University, the campus and the officers, employees, volunteers and agents of each of them as additional insureds, except for professional liability and workers’ compensation insurance.

In the event a contracting entity is self-insured, the following statement signed by an authorized corporate office of the contracting entity will be acceptable if the company has the necessary financial resources to guarantee payment when the law imposes such liability and subject to approval by the campus risk manager or other authorized campus representative:

“As an alternative to providing the general liability insurance required by this subsection [subsection #], the Contractor may cause to be provided other kinds of insurance or methods or plans of protection such as, but not limited to, self insurance pools, primary or excess risk retention groups if and to the extent such other kinds of insurance or methods or plans of protection shall afford reasonable protection to the Board of Trustees and their officers, agents, and employees.”

**Public Works Construction Contracts:** The insurance requirements for public works construction contracts shall be as specified in the general conditions for capital outlay projects and are summarized as follows:

- a. **General Liability:** comprehensive or commercial form minimum limits each Occurrence \$1,000,000, General Aggregate \$2,000,000.
- b. **Employer Liability:** \$1,000,000.
- c. **Business Automobile Liability:** minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- d. **Workers’ Compensation:** as required under California Law.

- e. Course of construction insurance: as specified in the Contract General Conditions maintained by Capital Planning, Design and Construction.
- f. Hold Harmless Provision: as specified in the Contract General Conditions maintained by Capital Planning, Design and Construction.

Exception: deviations from the amounts listed above shall be identified in a supplementary general conditions document prepared by the campus and included in the bid document.

Service Agreements:

- a. General Liability: comprehensive or commercial form minimum limits each Occurrence \$1,000,000, General Aggregate \$2,000,000.
- b. Employer Liability: \$1,000,000.
- c. Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- d. Worker's Compensation: as required under California State Law.
- e. Errors and Omission insurance is required for professional service consultants and professional service design architects/engineers.
- f. Hold Harmless Provision: reference CSU General Provisions for Service Agreements as maintained in the Contract Resource Library.

Exceptions: The limits shown above will generally be required for service providers involved in low -risk activities. Higher limits will be required for service providers performing potentially high-risk activities. Campus risk managers should be consulted for the minimum requirements.

Hazardous Substances and Waste Removal Services: These services include all labor, packaging, materials, tools, vehicles, placards, labels/markings, equipment, including personal protective equipment and safety equipment, expertise, and other means necessary and required to provide services for the pickup, transportation, and disposal of hazardous wastes.

- a. General Liability: comprehensive or commercial form minimum limits coverage in the minimum amount of \$5,000,000 combined single limit bodily injury and property damage each occurrence and \$10,000,000 aggregate, including premises/operations, personal injury, broad form property damage, products/completed operations, contractual liability, independent contractors and \$500,000 fire legal liability. A Waiver of Subrogation is required.
- b. Environmental Impairment (pollution) Liability: coverage in the minimum amount of \$5,000,000 combined single limit bodily injury and property damage each occurrence and \$10,000,000 aggregate, including clean-up costs.
- c. Commercial Automobile Liability: coverage is required in the minimum amount of \$1,000,000 combined single limit bodily injury and property damage, including owned, non-owned and hired automobiles; should also include Uninsured/Underinsured Motorists coverage in the minimum of \$1,000,000.

- d. Pollution and/or Asbestos Pollution Liability and or Errors and Omissions.
- e. Workers' Compensation: as required under California Law.
- f. Hold Harmless Provision: reference CSU General Provisions for Service Agreements as maintained in the Contracting Resources Library (CRL).

In addition to previous coverage noted under Contractor's auto liability, hazardous material transporter services must also have an MCS-90 endorsement and Sudden & Accidental Pollution Insurance endorsement. The Sudden & Accidental Pollution Insurance must have minimum limits of \$2,000,000 per occurrence, \$2,000,000 total. A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

Exceptions: Any deviations from the standards as described above, a risk identification and evaluation process (See page 1 of this executive order) must be completed and documented in the contract package.

#### Campus Facilities and Property Lease:

- a. General Liability: comprehensive or commercial form minimum limits each occurrence \$1,000,000, General Aggregate \$2,000,000 (when available).
- b. Employer Liability: \$1,000,000
- c. Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- d. Workers Compensation: as required under California law.
- e. Hold Harmless Provision: Lessee shall hold harmless, indemnify, and defend the State of California, the Trustees of the California State University, the [campus] and the officers, employees, volunteers and agents of each of them from and against any and all liability, loss, damage, expense, costs of every nature, and causes of actions arising out of or in connection with the use by the Lessee of said property.

Long-term leases of real property require case-by-case analysis to determine insurance requirements and will vary depending on the nature of the agreement. Insurance requirements should be commensurate with the activities associated with the lease that may cause damage to person or property.

#### Auxiliary Operation Agreement:

- a. General Liability: comprehensive or commercial form minimum limits each occurrence \$1,000,000, General Aggregate \$2,000,000.
- b. Employer Liability: \$1,000,000.
- c. Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- d. Workers' Compensation: as required under California law.

- e. Hold Harmless Provision: Auxiliary agrees to indemnify, defend, and save harmless the State of California, the Trustees of the California State University, the [campus name] and the officers, employees, volunteers and agents of each of them (all of which are hereinafter referred to as "State") from any and all loss, damage, or liability that may be suffered or incurred by State, caused by, arising out of or in any way connected with the operations of Auxiliary.

Long-term leases of real property require case-by-case analysis to determine insurance requirements and will vary depending on the nature of the agreement. Insurance requirements should be commensurate with the activities associated with the lease that may cause damage to person or property.

Placement Agreements: These agreements typically provide for students to be placed with other agencies or institutions for course-required work experience. Student placement agreements must be in writing and shall specify minimum insurance requirements applicable to the contracting parties and appropriate hold harmless provisions based upon the needs of the contracting parties. The following hold harmless provision may be used as a minimum:

Hold Harmless Provision: [insert entity] shall be responsible for damages caused by the negligence of its officers, employees and agents. Trustees shall be responsible for the damages caused by the negligence of its officers, employees and agents. The intent of this paragraph is to impose responsibility on each party for the negligence of its officers, employees and agents.

*Executive Order 849; CSU Policy 230 et seq.*

4.27 Hazardous Materials Removal Services Contracts : These services include all labor, packaging, materials, tools, vehicles, placards, labels/markings, equipment, including personal protective equipment and safety equipment, expertise, and other means necessary and required to provide services for the pickup, transportation, and disposal of hazardous wastes. Contracts involving the handling, removal, or disposal of hazardous materials shall comply with all State and Federal requirements and may be developed using the CSU's model contract for hazardous material removal serving as a guide. Changes to the model contract may be made with the concurrence of the campus Risk Management Office. The system -wide model can be found on the CSU website address <http://www.calstate.edu/csp/>.

*CSU Policy 412.07.*

4.28 Requisitions for Guest Artists and Lecturers: A requisition for a guest artist performance or lecturer's appearance may be processed as usual by converting it into a service order. Sole source justification is not required due to the unique nature of the service. Occasionally, the guest or guest's agent will provide a "contract" for signing. The "contract" must be reviewed, approved, and countersigned by the Procurement Office prior to returning it with the service order. Also, a Standard State 204 Form must be completed by the guest or guest's agent at this time. After execution of the "contract", a copy of it shall be retained in the Procurement

Office's files with a campus copy of the service order. Direct Payments may be issued to guest artists or lecturers when circumstances warrant it, in which case requisitions and/or contracts need not be prepared at all.

4.29 Assignment of Contract to a Different Contractor: An Assignment is a signed legal notification that is required to transfer the responsibility for completing a contract from the original contractor to a subsequent one. This is often because the original contractor is either unable or unwilling to complete the contract.

An Assignment is more than a simple company name change or a redirection of the payment. It is an entire transfer of the contract from one entity to another. After the Assignment is accepted (signed) by all three parties involved (the assignor, the assignee, and the CSU), the normal expectation is that the assignee is to perform the contract and receive payment. Once executed, the Assignment is to be incorporated into the contract by a formal amendment or change order. For a company name change only, an Assignment is not necessary or appropriate. This can be accomplished via an ordinary amendment or change order to the contract (the contractor must present evidence of the official name change, however, such as an approved corporate filing of a name change with the Secretary of State).

An Assignment may be necessary when one entity sells its business to another, when two entities merge into one, or when one entity purchases (or takes over) another. Fresh designations and signatures may be required on certain ancillary documents to the contract such as bonds, powers of attorney, the insurance certification, or other commitments that were originally signed by the assignor. For purposes of internal control, all Assignments, re-designations of payee, and company name changes shall be brought to the attention of the Procurement Officer.

4.30 Contract Award Report (State Form 16): State agencies (and the CSU) are required to give written notice at least quarterly to the Department of Fair Employment and Housing (DFEH), Office of Compliance Programs, of all contract awards (but not purchase orders) having a cost of \$5,000 or more. For each contract awarded, the notice shall list the name, address, and telephone number of the contractor; the federal employee identification number; the State contract identification number; the date of contract award; the contract amount, the project location; the name of the agent who signed the contract, the name of the contract-awarding agency (or campus); and the name of the officer signing on behalf of the agency (or campus). State Form 16 is normally used for the report when awards are reported individually To the DFEH. When the awards are reported quarterly rather than individually, the quarterly listing may be appended to SF 16 when it is submitted to the DFEH.

*Gov. Code 12990; Title 2, Sec. 8117.5; CSU Policy 404.*

4.31 Americans with Disabilities Act (ADA) : All contracts must contain a condition stating that the Contractor, by signing the contract, assures the University that it complies with Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as

well as all applicable regulations and guidelines issued pursuant to the ADA.

*42 U.S.C. 12101 et seq.; CSU Policy 228.*

4.32 Child Support Compliance Act: It is the policy of the State of California that anyone who enters into a contract with a State agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. Any contract of \$100,000 or more must include the CSU General Provision that references the Child Support Compliance Act.

*PCC 7110, CSU Policy 229.*

4.33 Leases of Real Property: The Trustees of the CSU are authorized, under statutes within the Education Code, to enter into real property lease agreements having provisions that are consistent with the mission of the University as described in the State legislature's Master Plan for Higher Education (Ed Code 66000 et seq.—the Donahoe Act, and especially Sec. 66606).

Authority has been delegated to the campus President or a President's designee to execute leases of real property as either lessor or lessee without advance approval by the Chancellor's Office, with the following exceptions: (1) leases that support the issuance of bonds or of other promissory notes or that transfer interest via an installment sale or other form of security; (2) leases with a term of twenty years or more, or with options resulting in a potential term of twenty years or more; (3) leases that require \$1 million or more as an annual payment; and (4) leases that permit any CSU real property to be used in the development of a project or enterprise.

It is recommended that the campus Procurement Office be contacted for consultation in advance of the initiation of any action toward the development or execution of a lease on real property.

Campus as Lessee: A campus requester for non-university or Foundation space, following initial discussions and an informal proposed arrangement made with the proposed lessor, must prepare and submit to the campus Procurement Office a written request to negotiate a lease, along with a completed information & data sheet (Space Action Request—State Form 9 is recommended), that includes a designed area map whenever appropriate. These two documents constitute the lease request. The Procurement Office reviews the request for content and form, making corrections where necessary. The Procurement Office then advises the requester as to the status of the request. If the request has been approved, a bid invitation shall be prepared by the Procurement Office, whenever one is required. If it is not required, the requester may proceed with lease negotiations and begin development of the lease, using the standard lease forms attainable from the Procurement Office or on the CS&P CRL website.

After subsequent negotiations and all terms & conditions are agreed upon between the parties to the proposed lease, the formal lease is drafted. Following pro-forma agreement of the parties to all the terms and conditions of the formal lease, four identical counterparts of it are prepared, and each counterpart is signed by the lessor. All four are then forwarded to the Procurement Office for further review and approval (a holding copy may also be prepared and retained in file by the requester). If any changes become necessary to the terms and conditions of the lease, four newly revised counterparts of the proposed lease must be prepared and be resubmitted back to the Procurement Office for further review prior to the execution of the lease (signing by the campus). If no additional changes are recommended and the lease is executed, the Procurement Office forwards one signed counterpart back to the lessor, retains one for the file, and distributes the other two to the requester of the lease and to Accounts Payable. Additional copies of the lease are prepared and distributed as needed by the requester.

If the lease requester and lessor opt to continue the lease into a period of time beyond the stated termination date (this may be done only when an optional extension of the lease appears as a provision within its terms and conditions), the requester must submit a new requisition to the Procurement Office to continue the funding under the amended term. The lease may also be established initially as a multi-year agreement, but because of the State's budgetary limitations on fiscal commitments, it must be funded anew for each additional fiscal period beyond the lease's stated term. All lease invoices shall first be approved by the requester prior to being presented to the Accounts Payable office for payment.

Leases of real property for additional campus space that are funded directly from Foundation accounts are not required to be processed in the preceding fashion. However, such leases must not commit nor obligate the Trustees of the CSU in any way, nor include the Trustees as a contracting party or as signatory.

Campus as Lessor: For the leasing of campus space to outside users (including the auxiliary organizations), direct payments or reimbursements to the CSU are required under State law. Campus facilities may be used only for activities that are compatible with the mission of the University. The use of campus facilities by off-campus organizations requires a user agreement (contract) containing terms & conditions that provide legal protection and that serve to avoid misunderstandings related to the activities. The terms & conditions also routinely require evidence of liability insurance coverage. Questions of potential liability may be addressed to the campus Risk Management Office.

Campus facilities are primarily for the purpose of conducting its educational programs. For several reasons, however, the campus does permit campus and off-campus organizations to use its facilities. Some programs, although not part of the campus's curriculum, add immeasurably to the students' educational experience. Others meet a community need and generate positive community relations. Finally, judicious scheduling that permits off-campus groups to use campus space when such use does not interfere with its educational programs can generate income for the campus, which helps meet continuing maintenance costs and provides monies



for major renovations and replacements.

Scheduling is arranged and usage regulations (as promulgated via the various departments of facility coordinators assigned the responsibilities for space rentals within the particular area being requested) are agreed upon. An applicant for the use of such campus space is required to obtain an approval signature from the designated coordinator. Insurance certification for campus-sponsored events and activities is usually waived from the standard requirements.

Very short-term licenses (those requiring perhaps only a few hours of use by either on-campus or off-campus groups) not involved with normal or routine campus -endorsed functions also require approved applications, but may or may not require a very detailed contract. This depends upon the degree of risk involved and whether any specific terms & conditions require being reduced to print and put to bi-lateral signature. A stock licensing agreement form or perhaps a standard "President's lease" can suffice for this purpose.

For long-term use of campus facilities or for activities that necessitate substantial terms & conditions to formalize mutual understandings or for activities that could pose significant risk to either the campus or to the user, the use of a formal lease agreement is recommended. A certification of insurance coverage is also required. This kind of lease agreement normally requires the use of one of the standard forms that has been previously approved for use by the Chancellor's Office or that appears as an Exhibit on the CS&P website <http://www.calstate.edu/csp/>. It is developed for this purpose by the "in-house" requester who wishes to have such a lease executed. Once this lease is drafted, it is submitted to the Procurement Office for review of content and form. Final approval for execution of a long-term lease of campus space must come from the Vice President, or designee.

*Ed Code 66000 et seq., 89046, 89048, 89048.5; C.O. Executive Order 669.*

4.34 Evaluation of Contractor Performance: The Contract/Contractor Evaluation (State Form 4) or other written evaluation may be prepared on any contract (excluding interagency agreements or contracts with other governmental entities). If an evaluation report is prepared, the person completing it should be a campus employee with direct knowledge of the contractor's performance. Copies of the evaluation report are to be filed in the Procurement Office. This report shall be retained for a period of up to thirty-six months after the work has been completed for purposes of future reference and audits.

When performance deficiencies occur during the term of the contract, the contractor must be notified of the deficiencies in writing and be afforded an opportunity to correct them within a prescribed (yet reasonable) timeframe. Contractors (including consultants) whose performances have been determined to be unsatisfactory, as recorded by written documentation, may be temporarily suspended from bidding on further contracts for a period of at least three (3) months, but not more than one year. The contractor shall be relieved of the suspension at any time after the three-month period, upon demonstrating to the campus's satisfaction that the deficiencies that resulted in the suspension have been corrected.

Evaluations shall not be open to public inspection. In extreme cases of poor performance by a contractor, the State Department of General Services Legal Services Division may be contacted as a first step toward temporary debarment proceedings.

*PCC 6109, 10303, 10367, 10369, 10370, 12102(j); CSU Policy 213.02.*

4.35 Year-End Tracking of Contracts through Final Approval: During the period normally reserved for year-end closing operations, contracts may sometimes need to be developed and/or awarded after being encumbered (but prior to June 30). When this is the case, the cost of the contract (when known) is encumbered into the financial system prior to the close-off deadline even when all of the administrative requirements for full development of the contract have not yet been met. The Procurement Office tracks the status of such a contract throughout this window of time, until it is finally executed and in full force and effect. Any contract that has been encumbered prior to being fully executed, however, is subject to the loss of funding if problems arise prior to June 30.

4.36 Distribution/Mail Services: DELETED

4.37 Mail Service: DELETED

4.38 Shipping Service: DELETED

4.39 Office Machine Repair Service: DELETED

4.40 Records Management: DELETED

## **Section 5 Requirements Specific to Information Technology Transactions**

In addition to the special requirements contained in this Section 5, requirements in Section 2, 3, and 4 also apply to the procurement of information technology (IT) equipment, materials, and services.

Information Technology (IT) is defined, for the purpose of its application by the State of California, to include (but not necessarily be limited to) all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data transmission, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

For a CSU IT Project (an IT procurement acquisition entailing \$500,000 or more in total cost or one that poses a high risk for, or serious impact on, the CSU), there is a feasibility study, a solicitation plan, and additional administrative procedural requirements that must precede or

accompany the undertaking and completion of the Project. These are detailed in Section 5.14.

Public Contract Code (PCC) Section 12100.5 requires the Trustees of the CSU to develop and maintain policies that further the legislative policies for IT procurement as expressed in Sections 12100 et seq. of the PCC. PCC Sections 10295 and 12120 provide that the CSU has an independent procurement authority separate from the State Departments of General Services and Finance. PCC Section 12102(b) and (c) require that contract awards for all large-scale systems integration projects be based on the proposal that provides the most value-efficient (best-value) solution to the awarding agency's requirements. However, hardware purchased independent of a large-scale system integration project may be made on the basis of lowest cost meeting all other specifications. When an acquisition is based upon cost alone, an award shall be made to the lowest responsible bidder meeting the specifications.

*PCC 12100 et seq.; Ed Code 89036; CSU Executive Order 667, 775, 862; CSU Policy 500, 501.*

5.01 Scope of Transactions : The scope of IT acquisition policy encompasses the following broad types of CSU acquisitions:

- a. Equipment: Acquisition of IT-related hardware and other capitalized tangible property items are accomplished by means of awarded purchase orders, master purchase agreements, lease/purchase agreements, or rental agreements. Acquisition of large-scale systems integration items (e.g., mainframe computers, network, voice, video, and telecommunications infrastructure installations) may employ the use of a standard agreement, rather than a purchase order, to accommodate specific and unique terms and conditions.
- b. Materials: IT materials are normally non-capitalized items. They are expendable supplies and low-value assets that can be readily replaced. These items are usually obtained through the issuance of a purchase order or by direct charge, rather than by the issuance of a contract. The acquisition of IT materials is subject to the standard CSU procurement policies.
- c. Services: Vendor or contractor services for IT-related functions normally require the issuance of standard agreements or service orders. They include such things as installation of hardware or software products, modifications or upgrades, equipment maintenance, repairs, network and database subscriptions, and consultant services.

5.02 General Provisions: All standard purchase and service contract policy requirements contained in other Sections of this Report, including the use of forms and exhibits, are applicable to IT acquisitions in addition to those that are stated here. They include, but are not limited to, policies governing sole source awards, vendor price schedules, DVBE compliance, drug free workplace certifications, notices of contract award, small business preferences, State contracts register, vendor data records, and applicable general provisions governing all transactions.

5.03 Procurement Principles for IT Transactions: The CSU shall employ sound and appropriate

business practices to guide and control the planning, acquisition, development, operation, maintenance, and evaluation of all IT-related applications. Each campus is responsible for assuring that all applicable state procurement laws and regulations are followed, in addition to the CSU policies.

Decisions regarding the application of IT equipment, materials, and services shall be based primarily on analyses of overall costs and benefits over the operational life cycle of the application. In selecting or developing applications, the campus shall consider the benefits and costs of maintaining compatibility with other planned and existing applications for both campus use and for the use of CSU as a whole.

By CSU policy, the campus is given a choice of vendors to meet its individual or unique hardware, service, and application requirements. Long-term contracts with annual cancellation and funding-out clauses are encouraged, as they help protect the CSU's investment as well as provide multi-year renewal options that encourage vendors to develop higher levels of service and support (Ref. PCC 12101.5(a)).

The CSU strives to continue transforming its procurement activities from a labor and paper intensive process to an all-electronic system whereby data bases of product and service needs are made accessible to vendors and contractors via either direct or dial-up computer access (Ref: PCC 12113.5).

*PCC 12100 et seq.; CSU Policy Sec. 500.*

**5.04 Competitive Bidding:** It is the policy of the CSU that all transactions made under the CSU procurement authority be designed to encourage active competition among those who wish to become the suppliers of goods and services required by the campuses of the CSU. There is no single competitive procurement methodology universally suited to all categories of IT acquisition. The CSU also recognizes that the same competitive processes used for obtaining non- IT goods and services such as the Invitation for Bid, and the Request for Proposal, are effective for IT acquisitions. There are, however, other techniques that may be tailored to support the unique characteristics of an IT acquisition.

Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to CSU's requirements. However, hardware purchased independent of a large-scale system integration project may be made on the basis of lowest cost meeting all other specifications. When an acquisition is based upon cost alone, an award shall be made to the lowest responsible bidder meeting the specifications. [Ref. 12102 (b)(c)].

**Bid Thresholds:**

- a. Acquisitions less than \$5,000 from Certified Small Businesses: An acquisition that is estimated to cost less than \$5,000 may be awarded to a Certified Small Business

without competition. However, whenever there is reason to believe a price quote from a single source is not fair and reasonable the campus shall obtain at least two price quotations from responsible suppliers.

- b. Acquisitions greater than \$5,000 and less than \$100,000 from Certified Small Businesses: Acquisitions that are estimated to be greater than \$5,000 and less than \$100,000 may be awarded to a Certified Small Business, as long as price quotations have been obtained from two or more small businesses.
- c. Acquisitions of \$100,000 or less (generally): Except in cases when it has been determined that only one source or that only one brand or trade name of an item will properly meet the needs of the CSU, an informal bid process may be used. Such a process may be in the form of written or verbal quotes from vendors.
- d. Acquisitions greater than \$100,000 (generally): Except in cases when it has been determined that only one source or that only one brand or trade name of an item will properly meet the needs of the CSU, an IT requirement estimated to result in a contract greater than \$100,000 shall be awarded using a formal solicitation process.

Formal Solicitations: Other requirements notwithstanding, formal procurement for IT goods and services shall comply with the following:

- a. Public notice of the intent to formally acquire IT goods and services from the open market shall be posted in a location easily accessible to any bidder who may wish to participate and advertised in the California State Contracts Register (CSCR). Complete copies of the bid or proposal solicitation document must also be maintained in the campus procurement office and made available to any interested provider upon request. The solicitation notice may also include an announcement in an appropriate newspaper or trade journal, including a brief description of the work to be performed, the closing date and time of bids or proposals to be received, and the location where complete copies of the solicitation document may be obtained.
- b. To promote fair and open competition each formal solicitation for IT goods and services must attempt to secure competitive bids or proposals. The requirement for fair and open competition shall have been met or is not required in the following instances:
  - 1. In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.
  - 2. When the campus awarding the contract has advertised the contract in the California State Contracts Register and has solicited all known potential contractors.
  - 3. The contract is with another state agency, local governmental entity, or an

auxiliary organization of the CSU. These contracts, however, may not be used to circumvent the competitive bidding requirements of this article.

4. The contract meets the conditions prescribed herein, under Policy Section 206, Limits on Competitive Bidding.

*PCC 1200 et seq.; CSU Policy 501,502; CS&P Bulletin 02-19, Rev.3.*

5.05 Best Value (Value-Effective) Acquisitions: The “Best Value” technique for IT acquisitions of goods and services shall be used to the maximum extent practical. Any acquisition that employs Best Value selection criteria shall result in an intent to award to the respondent achieving the highest score in a weighted evaluation process. There is no specific formula or regimen prescribed for examining the criteria in a Best Value award, but it is important that the award be consistent with the terms of the solicitation and that any price premium is justified by specific technical or value-added enhancements.

Solicitations for Best Value acquisitions may provide that the price quote be submitted under separate cover for evaluation purposes whenever this approach is preferred. Although the price quote and costs (including a “life-cycle cost”) must be included as criteria for making the contract award, other criteria shall also play a role. Such criteria may include, but are not limited to:

- a. Operational costs.
- b. Quality or technical competency of the bidder’s product or service.
- c. Delivery and implementation timetables including incentives for early delivery.
- d. Warranties, guarantees, and return policies.
- e. Costs associated with financing provisions or alternatives.
- f. Vendor’s financial stability.
- g. Consistency of proposed product or service with the planned application.
- h. Quality and effectiveness of the proposed product or service.
- i. Vendor’s industry or program experience.
- j. Vendor’s past performance record with similar installations.
- k. Risk assessment.
- l. Value-added services or options.
- m. Innovative use of current technologies—and quality results.
- n. Proven methodologies and tools used for servicing the product or program.
- o. Maximum facilitation of data exchange and systems integration.

*PCC 12102(b), 12100.7; CSU Policy 505.01.*

5.06 Best Financing Alternatives : For all solicitations formally advertised, evaluation of bidder proposals for the purpose of determining a contract award for IT goods or services shall provide for consideration of a bidder’s best financing alternatives, including lease or purchase alternatives, if any bidder so requests. This information must be made available to the campus at least 30 days prior to the date of the deadline for final bid submittals.

*PCC 12113; CSU Policy 507.04.*

5.07 State Division of Telecommunications (COMDIV): COMDIV is the Division of the State Department of General Services that is responsible for the development of tactical policy and procedures for telecommunication acquisitions consistent with statewide strategic policies. The CSU shall grant to COMDIV an opportunity to bid whenever the CSU solicits bids for telecommunications goods and services.

*PCC 12120; CSU Policy 507.02.*

5.08 Pre-Negotiation of Repetitive Contract Terms & Conditions : The campus Procurement Office may avail itself of any existing CSU model agreements for IT acquisitions. The terms & conditions expressed in a model agreement that is used repetitively with the issuance of IT-related contract awards may be pre-negotiated with the campus, upon request from a given vendor or contractor who normally bids on such awards. Such pre-negotiations must be conducted with oversight from the CS&P Department of the Chancellor's Office. A contract's General Provisions are non-negotiable, however, since they are comprised principally of State legal requirements to which all bidders and all State agencies (including the CSU) are bound. Any revisions that are agreed upon by both the CSU and the vendor/contractor shall be kept on file, as a matter of public record, and shall remain operational until either the CSU or the vendor/contractor provides 30 days notice to the other party that new negotiations are deemed appropriate. The Chancellor's Office, Contracts and Procurement Department, shall be responsible for maintaining a master file of pre-negotiated and approved terms and conditions.

*PCC 12101.2; CSU Policy 506.*

5.09 Multiple Awards : Contract awards may be initiated with more than one vendor or contractor for comparable products or services. Multiple awards may be used in instances where awarding to a single provider would be impractical or fail to satisfy the overall requirements of all potential users.

*PCC 12101.5(b); CSU Policy 505.02.*

5.10 Sole Source Approvals on IT Acquisitions: In addition to the usual approvals required on formal sole source awards of purchase orders and contracts, there may be one additional approval required for a sole source acquisition of IT equipment, materials, or service. IT sole source requisitions of \$250,000 or more that are not intended to be processed under a CSU system-wide agreement must also be approved by the campus Vice President, or designee.

*CSU Policy 500, 501.*

5.11 Used Equipment: Campuses may avail themselves of any opportunity to purchase used or remanufactured IT equipment where a substantial savings in cost (compared with other

alternatives for acquisition of similar equipment) justify the purchase.

*CSU Policy 507.01*

5.12 Disposal of Equipment: IT equipment and materials that have been determined to be surplus to the needs of the campus shall be disposed of in a manner that will best serve the interests of the campus or of the CSU as a whole. Methods used for the disposal of surplus goods may include auction or competitive bidding, open advertising at a fair market price, and transfer or sale of the goods to other governmental entities, including other CSU campuses.

*PCC 12102(i); CSU Policy 507.03.*

5.13 Special IT Contracts for the State or CSU: Any contract for IT goods or services, to be manufactured or performed by the contractor especially for the State or CSU and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the CSU deems necessary to protect the CSU's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that retention funds of not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the CSU, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

*PCC 12112.*

5.14 Information Technology Projects: A CSU IT Project is defined as an acquisition of IT goods or services that (a) is neither routine nor recurring, but one that has an estimated cost for procurement and implementation that is \$500,000 or more, or (b) comprises an activity that regardless of cost poses a high risk or may have a high impact on the CSU.

Prior to undertaking an IT Project, a feasibility study and a solicitation plan must be developed in accordance with the model Information Technology Project and Procurement Planning Guidelines. These guidelines are located on the CSU Contract Resources Library website [www.calstate.edu/CSP/crl/policy/POLICY.shtml](http://www.calstate.edu/CSP/crl/policy/POLICY.shtml) (See CRL 055). IT Projects so developed must receive the following approvals:

- a. The feasibility study must be reviewed and approved by the Executive Vice Chancellor and the CSU Chief Financial Officer.
- b. The solicitation plan must be reviewed and approved by the chief business officer of the campus or of the CSU entity that has prepared it.

The procurement of IT goods and services for a CSU IT Project shall comply with the policies as stated on the CS&P website Policy Manual for Contracting and Procurement. It is the policy of the CSU to employ fair and open competition on these Projects to obtain the best value for the



CSU. Evaluation and award of the procurement instrument shall be based on objective and quantified evaluation criteria as expressed in the solicitation document.

Prior to the Project start date, an implementation plan must be filed with the Executive Vice Chancellor and CSU Chief Financial Officer. The plan shall include the major project milestones, the Project management structure, the criteria for completion, and the anticipated completion date.

Within 60 days of the Project completion, as defined in the implementation plan, the campus or CSU entity that developed the Project shall conduct its first implementation review. This review should be made by a person not closely involved with the Project yet with sufficient knowledge to grasp the fundamentals of the Project's goals and operational results. The review shall include and determine the following:

- a. Whether the Project achieved its stated goals.
- b. Whether the Project was completed in line with costs estimated in the feasibility study report, and if not, why not.
- c. The specific outcomes of the Project, qualitatively and quantitatively.
- d. Whether the transition from Project to on-going operation has succeeded.
- e. The effectiveness of the Project management process.
- f. The need for subsequent actions and/or projects.
- g. The need for subsequent reviews of the Project.

The total estimated cost for a Project shall include all projected acquisition expenses related to Project hardware and software; shipping, staging, and installation; operation and maintenance; temporary, new, or existing personnel for operating the Project; training; and any direct administrative oversight requirements. The foregoing projected expenses can be keyed to a life cycle for the Project to arrive at the total estimated cost.

Routine and recurring IT purchases, upgrades to existing systems, maintenance agreements for existing hardware and software systems, and acquisition or implementation of goods or services to supplement baseline requirements that have already been approved or established, do not require formal feasibility studies, solicitation plans, or implementation reviews.

A proposal that entails a partnership or one that is unsolicited but offers institutional benefits is difficult to appraise before full cost estimates have been developed. Such a proposal needs to be individually addressed to determine whether it would qualify as a Project. An analysis would include the determination of whether, regardless of cost, it poses a high risk or impact (financial or otherwise), and if so, a feasibility study must be prepared notwithstanding the completion of a total cost estimate. Once a feasibility study is approved for such a Project, the solicitation plan must also address the sole source nature of the Project (if there is no other source), and why a sole source acquisition under the existing conditions is justified.

*CSU Executive Order 862.*

5.15 Conflict of Interest: It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of an information technology contract when the contract party knew or should have known that the disclosure was likely to cause harm.

*PCC 10426.*

## **Section 6 Requirements for Transactions Involving the Sale, Lease, or License of Campus Property and the Marketing of its Services**

A small fraction of procurement operations relate to transactions that provide revenues or benefits to the campus from the marketing of its property or services. This Section 6 summarizes the procedures for these transactions. *Ed Code 89048 (d) and (f), 89720; California State Constitution Article 16, Sec. 6; CSU Policy sec. 600 et seq.*

6.01 Release of State-Owned Property: The CSU may sell or exchange any of its property for a fair market value if it is determined that the sale or exchange is in the best interests of the University. However, the release or sale of State-owned CSU property to other entities without public participation is prohibited unless the property is either donated to, or sold at a predetermined fair market price, to a State agency or tax-supported institution.

As stated under California State Constitution Article 16, Sec. 6, the State of California is not empowered to make a gift or authorize the making of any gift, of any public money or thing of value to any individual. Neither shall any State-owned tangible goods, supplies, equipment, or materials be sold, released, or otherwise conveyed for use by the CSU to a CSU employee unless the general public is given equal opportunity to acquire the property. Such property may, however, be junked or otherwise disposed of and surveyed from State property records whenever the property is documented to have no remaining market value or practical use to the State.

The CSU may sell or exchange any personal property belonging to the CSU if the sale or exchange is in its best interests.

The sale, exchange, or disposal of real property acquired from revenues generated by the parking and housing programs may be transacted with any CSU auxiliary organization (including a campus Foundation), up to a limit of \$10 million and with the approval of the CSU Trustees. Such real property may be offered by the CSU only when at least one of its borders is adjacent to real property not owned by the CSU. Where more than one auxiliary organization expresses interest in acquiring the real property, it shall be awarded to the highest responsible bidder. Prior to the CSU sale of any interests in its real property, the CSU must offer the property to any

interested local governmental entities. No real property that is part of a main campus shall be sold or exchanged to other than a CSU auxiliary organization. CSU real property not generated by parking or housing programs may only be leased (at a fair market value) to a non-CSU party or auxiliary organization.

*California State Constitution Article 16, Sec. 6; Ed Code 89036 (a), 89048 (d) and (f), 89720; CSU Executive Order 409(b); CSU Policy 601.*

6.02 Lease of University Personal Property: The CSU may execute leases for any of its property when the leases are consistent with its functions as prescribed under California law. These include but are not limited to leases to a nonprofit organization composed exclusively of students of the University or members of the faculty of the University, or both, for purposes related to the activities of the university or for the activities of student or faculty organizations.

*Ed Code 89046(a).*

6.03 Sale or License of Intellectual Property: Campuses have the delegated authority from the Trustees to transfer intangible intellectual property rights to university faculty, staff, or other entities for valuable consideration. It is the responsibility of the campus President to ensure that campus policies addressing intellectual property are kept current and comprehensive as to content and procedure.

*CSU Policy 602.*

6.04 Disposal of Vehicles : A campus vehicle may be discarded, traded in, or sold whenever the campus determines it is within its best interests to do so, regardless of age or mileage, or at such time as the vehicle has been determined to be unsafe for continued use, or when it no longer serves the purpose for which it was acquired. Options for the disposal of a vehicle can include (1) surveying it to the DGS State Surplus Property Division of DGS, (2) transferring it to the DGS Fleet Administration Division, and (3) liquidating it through competitive bidding or auction at the maximum price attainable in the open market. All sales of publicly owned vehicles, including any owned by CSU, are governed by the provisions stated in the California Vehicle Code.

*California Vehicle Code Sec. 24007 et seq.; CSU Policy 603.*

6.05 Services Provided by the University: The CSU does not engage in the sale of services in competition with private enterprise, except when the rendering of services is related to its educational mission. Whenever services are sold by the campus, the full cost of providing them must be recovered, including any direct, indirect (overhead), or marginal costs that might be applicable. The basis for setting values to the services shall be documented in a simple, equitable, and rational way, and be made available upon request.

*CSU Executive Order 750 ; CSU Policy 604.*

## Section 7 Requirements for Developing a Public Works Project

**Content:** The following information is intended to summarize in a sequential manner the steps that generally must be taken when developing a typical public works project. For minor projects, many of the steps need not be carried out. Conversely, for a typical major project, every conceivable detail is not described within a given step; therefore, campus personnel involved with the development of a project and contract award are invited to consult with the Facilities or Procurement staffs whenever the need for added detail arises.

**Authority:** The authority for the Trustees of the CSU to undertake, develop, and manage public works projects resides in Sections 10700 et seq., and 10800 et seq., of the California Public Contract Code. These two Sections jointly are cited as the California State University Contract Law. Funding for public works projects can be derived from a number of different sources, including Legislative appropriations as authorized within the annual State Budget Acts, in-system resource allotments and allocations, and outside contract or grant awards (federal, state, or local governments, auxiliary organizations, private donors, etc.).

This authority has been further delegated to the campus presidents via Chancellor's Office Executive Order 672.

**References cited:** *Italicized* references are used at the ends of Section 7 paragraphs. Among others, they include: *PCC* (CA Public Contract Code); *Civil Code* (CA); *Labor Code* (CA); and *SUAM* (State University Administrative Manual—public works).

**General Responsibilities:** The working titles used herein may vary from one campus to the next. As a case in point, the two campus administrators who typically share many of the functional responsibilities for a public works project are termed the "Construction Administrator" and the "Contracts Officer." These are generic working titles that could apply to campus positions having entirely different names: it is also possible that the project responsibilities described under either of these two titles may in fact be distributed among several individuals.

Regardless how the responsibilities are distributed, the functions of these two can be described as follows:

- a. **Construction Administrator (C. A.):** This person is selected by the campus administration to undertake the responsibility for managing most aspects of the design development and construction activities, for either a single given project or for all local public works projects. This role is commonly assigned to an executive dean, the facilities planning manager, the director of plant operations, or a specialist project manager. Individual project responsibility for construction may also be delegated to any other appropriate person on campus having an understanding of statutory, regulatory, and policy requirements as well as the practical considerations related to construction. The Construction Administrator and the Contracts Officer, working in concert, prepare (1)

documents for the bid solicitation & advertisements, (2) the contract contents, and (3) other notices/materials related to the execution, performance, and completion of the contract. Interaction with Capital Planning, Design and Construction (CPDC) of the Chancellor's Office is routine for the C.A.

- b. Contracts Officer (C.O.): This person is an individual trained to assume the responsibility for developing, bidding, awarding, and enforcing the provisions of all campus contracts, including those for public works. This responsibility is commonly assigned to the campus procurement officer, or another staff member within the Procurement Office. The Contracts Officer acts in concert with the Construction Administrator or a project manager to develop (1) information and data needed to be incorporated into the bid solicitations & advertisements, (2) the contract contents, and (3) other notices or materials related to the execution, performance, and completion of the contract. The Contracts Officer also interacts and coordinates contract-related activities with other campus offices such as accounting, budget services, and risk management. Interaction with Contract Services and Procurement (CS&P) of the Chancellor's Office is routine for the C.O.

*PCC 10700 et seq., 10800 et seq..*

7.01 Establishing a Need for the Project: The idea for a project is conceived by a project applicant or a user group. The concept is proposed & developed, reduced to writing & sketches, and evaluated for feasibility. If the concept appears feasible, it is generally transmitted to the Facilities or Planning department for further evaluation.

*PCC 1101, 10701(a); SUAM 9011, 9013.*

7.02 Feasibility Study and Project Description: An initial feasibility study is performed through discussions with the applicant or user group. A project description is developed, along with a scope and estimated cost. If the concept remains feasible and affordable, the feasibility study is typically submitted to a campus planning committee for review & approval (or rejection).

*SUAM 9011, 9028.*

7.03 Formal Conceptual Study: After the campus planning committee's approval, a detailed conceptual project scope and budget are developed, funding options are contemplated (potential sources being identified), programming and spatial relationships are considered, adherence to the campus Master Plan is assured, and a set of Preliminary Plans are drawn either by campus staff or a contracted architect (the campus Architect can be used for this). All Project documents are then submitted to the campus planning committee for final approval. Once approved, a corrected cost estimate then becomes part of the campus' projected budget plans. Major Cap proposal documents, including the Preliminary Plans, must be submitted for further review to Capital Planning, Design, and Construction (CPDC) at the Chancellor's Office.

*SUAM 9007-9014, 9131.*

7.04 Project Approval and Funding: Approval of Major Cap projects is coordinated by the campus and CPDC to secure necessary approvals from the CSU Trustees, the State Public Works Board, the Department of Finance, and the Legislature (depending upon the funding source). Minor Cap projects are approved either by the campus or by CPDC, again depending upon the funding source. CPDC transmits copies of the Project proposal, along with the Preliminary Plans and all other Project documents, to the State Department of Finance (DOF) and the Legislative Analyst's Office for review of scope and cost. After securing an approval in principle, CPDC arranges with the DOF for funding (bonds or budgeted line item appropriations). The State Public Works Board must then approve the Preliminary Plans as to cost and scope. If approved, the budgeted Project will ultimately appear in the State Budget Act as a line item. The Project funding is appropriated to the CSU (CPDC receives it) and a campus Project Manager is selected to oversee the Project. Funds are then allocated (in prescribed increments, when required) by CPDC to the campus for Project use.

*SUAM 9001, 9025-9033, 9202.*

7.05 Project Budgeting: The campus projected budget plan for the Project is revised to reflect the approved budget as reported by CPDC. For Major Cap projects, the funded amount is applied to a campus long-range budget plan; for Minor Cap projects, the funded amount is entered into a campus current or subsequent year's budget. Campus accounts for the Project are then set up accordingly.

*SUAM 9034-9039.*

7.06 Project Tracking System: All planned Project budget expenditures are entered into a Capital Projects Tracking System. All figures are reconciled to the amounts established within the Project account(s). The Project Tracking System should be reflective of perceived Project milestones.

*SUAM 9792, 9800 et seq.*

7.07 Professional Services Solicitation: Generally Facilities may elect to offer the appointment for engineering, architectural, or landscape services directly to the Campus Consulting Engineer, Campus Consulting Architect or Campus Landscape Architect. In this event, direct negotiations for the services may be undertaken. If, however, the offer is declined then other proposals are solicited via an RFP. Under either scenario, a project requisition containing as much information as is available is submitted to the Contracts Officer (C.O.) for each category of professional service needed. Such services may include surveying, soil testing, architectural design & activities, engineering design & activities, landscaping design, general studies, construction management, project inspection, etc. A numbered requisition, at minimum, should contain a brief description of the service needed, a project number or other identification for reference and filing purposes, and estimate of the cost, budgeting information that includes the account(s) to be charged, and beginning & ending dates for the service. Other information

placed on the requisition can be helpful too, such as advertising advice, pre-qualification requirements (if any), pre-bid conferences, and job walks. A project requisition should present a clear preview of the terms & conditions in the contract—the five Ws: what, why, who, where, and when.

If the Project is a Major Cap, potential service providers must be selected from pre-qualified listings maintained by CPDC. For Minor Cap projects, campuses may pre-qualify their own selected potential service providers if desired.

If an RFP needs to be developed, the project requisition serves as the source of basic information. The C.O. coordinates the development of the RFP. The RFP shall include at minimum a project description, a construction cost estimate, and the scope of services required, along with a copy of the agreement form to be used. The C.A. also assists the C.O. in developing the text for an advertisement whenever the selection field of potential service providers needs to be expanded. Once the text is developed, the C.O. places the advertisement in the appropriate media. After the RFP is completed, copies of it are distributed by the C.O. both to advertisement respondents and to any other professional service providers directly solicited.

*PCC 10701(c), 10707; Gov. Code 4525, 4526; SUAM 9004, 9200 et seq., 9700.03.*

7.08 Selection of a Professional Services Provider: Proposals from potential professional service providers are received by the C.O. and submitted to C.A. for evaluation. A short-listing of potential providers is created for interview. After interviews are conducted, the candidates are ranked in order of preference and negotiations are pursued to arrive at a mutually acceptable fee. If negotiations are unsuccessful with the highest ranked candidate, new negotiations may be initiated with the next highest ranked candidate, and so on, in order of ranking. When negotiations are successfully concluded, a formal offer to award the Agreement is made. The provider then responds with a formal acceptance. For Major Cap projects, CPDC must be notified of the selection.

*PCC 6106; SUAM 9207 et seq.*

7.09 Award of a Professional Services Agreement: C.A. requests the C.O. to prepare a formal Agreement to the selected professional service provider, using information collected from the selection process, the project requisition, completed forms required under CSU policy, and any other agreed-upon matters. Five counterparts of the Agreement are prepared and signed by both parties. These five counterparts are then forwarded to the Office of General Counsel for examination (regardless of the amount). General Counsel either endorses or rejects the Agreement and if endorsed returns four of the counterparts back to the C.O. as a legal and binding document. The four counterparts are distributed to all appropriate parties, including the service provider.

*PCC 10707, 10820; SUAM 9208-9210.*

7.10 Extra Services or Design Change Authorizations: The scope of a desired change (as authorized within the Agreement) is identified and reviewed with the professional service provider. If agreed, generally Facilities or Planning requests that an “Extra Services Authorization Letter” be prepared. The C.A. prepares the letter, secures an approval with authorized signature, and forwards a copy of the signed letter to the service provider.

*SUAM 9210.02.*

7.11 Emergency Contracts: When the campus determines that an emergency exists due to an act of God, earthquake, flood, storm, fire, landslide, public disturbance, vandalism, or other unexpected cause which results in damage to a State-owned building, State-owned real property, or any improvements thereon, an emergency contract may be awarded to perform remedial work without the taking of formal bids. More than one informal price quote may be solicited when practical, however, to help assure that reasonable charges are assessed for the work. Emergency work is defined in law to mean a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

*PCC 1102, 10722.*

7.12 Design/Build Projects: For conventional D/B projects, the campus should conclude all project programming and conceptual planning activities prior to issuing an RFP to interested contractors. For modified D/B projects, planning activities are taken through the Schematic Design Phase for incorporation into the RFP. D/B projects, if funded by Major Cap Outlay appropriations, must be advertised. An interested contractor must be pre-qualified before submitting a proposal. Proposals are evaluated, and the determination of a contract award is made on the basis of “best value.”

*PCC 10708; SUAM 9701.07.)*

7.13 Job Order Contracts (JOC): Section 10710 of the PCC authorizes the CSU to award annual “unit price” contracts not exceeding \$3 million per contract per one-year period for repair jobs, facility renovations or modifications, and other kinds of jobs including repetitive work. JOC awards, when utilized, must be issued to the lowest responsible bidder, and shall be based primarily on plans and specifications for “typical work,” as described in the bid solicitation document. These contracts are not to be used for capital outlay projects for which total project costs exceed the dollar limitation for awarding a Minor Cap contract. “Unit price” refers to the amount paid for a single unit of work. “Typical work” means a work description applicable universally or applicable to a large number of individual projects at a single campus. “Repetitive work” is interpreted to mean jobs that require periodic attention and are assigned routinely by the campus. All JOC project awards require contractor pre-qualifications to be submitted whenever the total estimated cost equals or exceeds the dollar figure established under CSU policy requiring pre-qualifications to be submitted for standard (single project)



awards. Also, Office of General Counsel approval is required for all JOC awards exceeding the dollar limitation for Minor Cap contract awards.

*PCC 10710, 10724; SUAM 9701.03.*

7.14 Schematic Design Phase and Job Start Meeting: Following the Project approval by CPDC, receipt of funding, and General Counsel's endorsement of the A/E Agreement, a "job start" meeting is scheduled with the Project Architect/Engineer and other team members. Important issues such as programming, design, site development, staging, campus impact and other related Project matters are discussed.

Documents and reports required by law or CSU policy are initiated and pursued by the Project Architect, the Construction Administrator, and the Project Manager (if such a person is designated). These include schematic drawings and blueprints; the development of detailed specifications and special conditions; plan checks, site surveys, soil tests, hazard materials reports, fire marshal approvals, and other useful analyses and studies related to the Project. The Preliminary Design Phase is also initiated at the job start meeting.

*SUAM 9233 et seq.*

7.15 Preliminary Design Phase: After campus approval of the Schematic Design, the A/E is directed to commence work on the Preliminary Design. This Phase includes the development of formal plans & blueprints, outline specifications & measurements, cost estimates, form processing procedures, refined Project milestones, value-engineering breakpoints, additive or deductive alternates, filing of CBC, ADA, CEQA, and EIR compliance documents, the fixing of dates for the Pre-bid Conference or Job Walk (for construction), the Bid Opening, potential issues with public utility companies, and state, county and city code and ordinance requirements.

*PCC 1104; SUAM 9203, 9232, 9234 et seq.*

7.16 Construction Documents Phase: Following campus approval of the Preliminary Design documents, development of the Construction Documents is initiated. These address all elements of the Project design, function, and construction. These Documents are used for securing bids and constructing the Project. The Bid Documents in the Package include, but are not necessarily limited to, the following: Bid Cover and Title Page, Notice To Contractors, Bid Proposal Form (exhibit) and Signature Page, Contract General Conditions, Supplementary General Conditions, Detailed Plans & Specifications, Bidders' Bond (exhibit), Certificate of Appropriate License and California Company, List of Proposed Subcontractors (sample form), Expanded Subcontractor List (sample form), Small Business Preference and Certification Request, Certification form (of signature authority), Non-collusion Affidavit, and DVBE Supplementary General Conditions.

During this Phase the Project Architect and the Construction Administrator (C.A.) jointly

determine the sequence of work to be performed, time schedules, requirements, etc., for the construction activities. Any remaining issues with campus consultants, utility companies, regulatory offices & agencies, or other public or private entities are also resolved at this stage of Project activity. A preference for materials, brand or trade names, and detailed specifications also is determined. A provision for substitutes or “equal” products, if any, is made.

At the beginning of this Phase, 50% and 90% “milestone” progress junctures for the architectural design work are established for the purpose of providing the campus with opportunities to review the Architect’s ongoing work. At the conclusion of this Phase, a full Bid Proposal Package (including the Construction Phase Documents) should be drafted, assembled, and prepared for further revisions needed prior to having it printed.

*PCC 7106, 10720, 10765; Bus. & Prof. Code 16600 et seq.; SUAM 9235 et seq.*

7.17 Outside Review of Construction Phase Documents, Drawings, and Specifications: Input from state and local regulatory agencies, CPDC, or other entities having authority for, or interest in, the Project, may call for revisions. If so, these revisions are incorporated into the Bid Proposal Package.

*Health & Safety Code 13108(c), 13143, 18901-18949.6; Gov. Code 13332.11; SUAM 9232.*

7.18 Pre-bid (internal) Meeting: This step typically begins after the 90% review milestone has been conducted on the Project Architect’s work and may require a series of meetings rather than just one. Prior to printing and advertising the Bid Proposal Package, any final determinations and revisions must be made at this meeting and be incorporated into the Bid Proposal Package. These may include such things as the proposed length of the contract term, a liquidated damages daily rate, special worksite or scheduling conditions imposed by the campus, prevailing wage rates, key action dates for bidders (pre-bid conference, job walk, a question & answer deadline, bid opening date, etc.).

*PCC 10826; Labor Code 1720, 1771, 1771.5; SUAM 9721.*

7.19 Additive or Deductive Alternates and Approval To Bid: To prepare for the possibility that construction bids will come in lower (use additive alternates) or higher (use deductive alternates) than anticipated or budgeted, such alternates may be developed and included in the Bid Documents as mandatory bid supplements. If the Project is a Major Capital Outlay funded, bid alternates must be pre-approved by CPDC and the State Department of Finance (DOF). Once approved, the alternates are incorporated into the Bid Proposal Package. A “Request for Approval to Proceed to Bid” letter is sent by the campus to CPDC. This letter certifies that all required plan checks are completed, that the campus has reviewed the documents, and that they are in compliance with the approved Project program scope and budget. Any deviations must be clearly identified and explained. If the “Request for Approval to Proceed to Bid” letter is approved by CPDC, the campus is officially notified and a final review of the Bid Proposal

Package is jointly undertaken by the Project Architect and the campus.

*Gov. Code 13332.11; PCC 10780.5; SUAM 9721 et seq.*

7.20 Final Bid Proposal Package Review: Prior to printing the Bid Proposal Package and advertising the Project in newspapers and other printed media as required, a final inspection of all contents of the Bid Proposal Package is conducted jointly by the Project Architect (in concert with the Project Engineer when appropriate) and the campus to free the contents from all errors, misprints, and omissions.

*SUAM 9731 et seq.*

7.21 Developing, Printing, Advertising, and Release of the Bid Proposal Package: Once a final review has been performed of all contents in the Bid Proposal Package, the Construction Administrator (C.A.) prepares a set of "Approval to Advertise for Bids" documents and submits them to the appropriate campus authorities for signature. Once signed, the documents are placed into the Project File for future reference. Minor Cap Outlay projects, or other projects not funded by Major Cap Outlay funds, require campus approvals only. For all projects, the C.A. and C.O. jointly prepare an advertisement for the solicitation of bids. The C.O. transmits the ad for placement into appropriate newspapers and other printed media as required. Interested contractors who respond are listed for purposes of receiving a Bid Proposal Package. Advertising is not required if the Project is Minor Cap and known contractors are invited by the C.O. to submit bids.

A pre-stamped number shall be affixed to each Bid Proposal Package printed, and the number recorded in a logbook for further tracking purposes. As the sets are later issued to the potential bidders, the recorded number shall be identifiable with the name of the bidder. A refundable or non-refundable deposit for each Bid Proposal Package issued may be required to help offset printing costs.

*PCC 10740 et seq.; Gov. Code 14825; SUAM 9723 et seq., 9730 et seq., 9731 et seq.*

7.22 Pre-bid Conference or Job Walk: If specified in the Notice to Contractors document in the Bid Proposal Package, a Pre-bid Conference or Job Walk (job site inspection) can be designated for either mandatory or optional attendance, as the campus elects. This event must be scheduled to take place after the Bid Proposal Package has been disseminated. If for unexpected reasons the event must be rescheduled, a documented notification must be issued to all bidders who have expressed interest whether or not the event has been designated as a mandatory one. An attendance log must be utilized by the campus representative, at the event. Also, bidder questions posed during the event, if responded to, must be answered so that every attendee can hear the answer. Such questions and answers must also be transmitted in writing to all attendees after the event, in the form of an addendum to the Bid Proposal Package. If questions are submitted in writing after the event, copies of these

questions with the answers must also be provided to the attendees on the addendum. Bidders must be reminded at the event of the date of the bid opening and that they must be pre-qualified to bid, if that has been established as a requirement in the Bid Documents. The C.A. and the C.O. (or their designated representatives) SHALL attend the Pre-bid Conference or Job Walk.

*PCC 6610; SUAM 9723.*

7.23 Issuing Addenda to the Bid Proposal Package: When bidder inquiries or campus discoveries of errors or oversights lead to the necessity of issuing addenda to holders of the Bid Proposal Packages, each addendum shall be assigned a sequential number by the campus. Each addendum becomes an integral part of the Bid Documents, and receipt of each is required to be acknowledged by any contractor who ultimately submits a bid.

*SUAM 9747.*

7.24 Pre-qualifying the Bidders: A financial pre-qualification of bidders is required for Major Capital projects estimated to cost \$300,000 or more. It is optional for projects having lower cost estimates. The financial pre-qualifying process must be undertaken and successfully completed before bid proposal forms are issued to the prospective bidders and the bids opened. Some bidders may already have gone through this process during a prior bid invitation for a CSU project and are currently listed as approved. For those who have not, the pre-qualifying forms and documents are requested from CPDC, completed, and submitted back for further examination. The C.O. coordinates this effort with CPDC during the pre-bid period and, once approved, the bidder is notified and a bid may be tendered to the campus. The campus or CPDC may additionally elect to pre-qualify bidders on the basis of their skills and experience.

*PCC 10760, 10763; SUAM 9740-9745.*

7.25 Bid Opening: The Notice to Contractors must state when and where sealed bids are to be opened. All bid proposals must be received by the C.O. (or a C.O. representative) prior to the scheduled time. A single campus representative is designated to conduct the meeting and open the bids at the scheduled time and place. This person is responsible for the initial review of each bid proposal to determine if it appears to be responsive. A second person is designated to record the bid information as the bids are opened. A third person (a monitor) must be made responsible to keep track of all the bid materials before and after the Bid Opening. Bids are opened one at a time, announcing: (a) bidder's name and address; (b) compliance with the 10% bid security requirement; (c) listed subcontractors; (d) any Small Business preference; (e) whether bidder qualifies as a California company, and (f) the amount of bid including any additive or deductive alternates, or unit prices. A summary or "Abstract of Bids" is prepared either during or after the Bid Opening. The apparent low bidder's name is announced at the conclusion of the Bid Opening. It is optional to announce the apparent next-lowest bidder's name, as well.

*PCC 4100 et seq., 6107, 10765-10767; Gov. Code 14835; SUAM 9750-9765.*

7.26 Determination of the Lowest Responsible Bidder: The C.O. evaluates the bid documentation tendered by each bidder to ensure it is generally responsive to the contract bid requirements (excluding the DVBE documents temporarily). Only those bids that are determined to have met all the bid requirements become eligible for further consideration in receiving the contract award. The apparent low bidder is determined by the C.O. to be either “responsible” or “not responsible,” under the legal definition as stated in Section 1103 of the California Public Contract Code. If “not responsible,” the bid is rejected, and the same determination is made on the second-lowest bidder, etc.

The lowest responsible bidder must present documented evidence of being properly licensed to do the work. Optionally, a pocket license may be presented if the contractor swears under oath that it is current, valid, and appropriate. If no pocket license is presented, the C.O. must verify authenticity of the license with the Contractors’ State License Board.

The Bid Bond (bid security) of the lowest responsible bidder is examined by the C.O. to ensure that it has been issued by an agent officially registered with the State of California.

The C.O. then examines the Expanded List of Sub-contractors (this must be submitted within two days after the Bid Opening) to ensure that the names are the same as those provided in the bidder’s Bid Proposal and that the license numbers and other information listed match to the Registry maintained by the State Contractor’s License Board.

Once the aforementioned determinations have been concluded, the C.O. proceeds to verify the lowest bidder’s compliance with DVBE requirements. Optionally, this may also be done on the second lowest responsible bidder’s DVBE documentation.

*PCC 1103, 3300, 5100 et seq., 6100, 10722, 10762, 10765; 10780, 10785; Bus. & Prof. Code 7028.15; SUAM 9774.*

7.27 Disabled Veteran Business Enterprise (DVBE) Requirements: The C.O. collects and examines the DVBE certification documents from the two apparent lowest bidders. The materials and data submitted must have been gathered, and the requirements met, prior to the bid opening. If all DVBE documents are in order, the lowest responsible bidder (as ascertained by the amounts submitted on the Bid Proposal Forms and compliance with all bid requirements) becomes the proposed contractor. The C.A. is informed of the results, and a contract requisition is prepared and submitted to the C.O. so that work in assembling a contract may begin.

*PCC 10115 et seq.; SUAM 9720.02, 9763, 9774.*

7.28 Proposed Substitution of Materials or Specified Brand/Trade Name Products: If the proposed contractor, prior to the contract award, wishes to use materials or products other than

those specified in the Bid Documents, a request must first be proposed in writing to the C.A. The C.A. must then consult with Project team members (outside experts may also be used) to confirm that the proposed substitute is “equal” to the item specified. If the C.A. is advised that the substitute is not equal and therefore unacceptable, the proposed contractor must either withdraw the request or be disqualified from further consideration. Once the proposed substitution is accepted, the proposed contractor is notified, the C.O. is advised of any changes needed to the proposed contract, and the award procedure continues.

*PCC 3400; SUAM 9721.01, 9721.02.*

7.29 Announcement of Intent to Award a Contract: A printed announcement, with the name of the lowest responsible bidder appearing on it, is prepared by the C.O. for release. It should be posted in or near the Procurement Office in an area that is available to the general public for viewing. Optionally (or additionally) it may be transmitted to all bidders. A reasonable period of time should then be allowed to permit receipt of any bid award protests.

*SUAM 9780-9780.02.*

7.30 Bid Award Protests: The C.O. is normally the person designated to resolve bid award protests. A number of options exist for resolving these protests, depending upon their significance and complexity. Sometimes the C.O. may elect to resolve a bid award protest personally, or by delegating the responsibility to a single individual. Often, the protest may be resolved simply by providing a clarification within the Bid Documents. However, once it becomes evident that a matter cannot be resolved informally by this means, it must be taken to the next step. At this point, the C.O. (or designated representative) formally acknowledges the issue by serving written notification to the protester that a full and complete formal statement detailing the nature of the problem must be received by the campus within five (5) working days after the notification is issued. Failure to file the formal statement shall be interpreted to mean that the matter has been withdrawn.

Once the formal statement is received, the matter may be addressed in several different ways, including:

- a. Personal resolution by the C.O. or a designated representative;
- b. Escalation to a higher level in the campus administration;
- c. Assistance from the Chancellor’s Office;
- d. Review and resolution by an appointed protest review panel.

If a protest review panel is appointed, its members should not be directly involved with the award of the contract.

The written formal statement shall be examined and the actions of both the campus and the lowest responsible bidder taken into account to determine whether each acted in a manner consistent with the requirements stated in the Bid Documents. After all factors have been

analyzed, a decision shall be issued in a timely fashion. The protest must either be upheld or denied. That decision shall be in writing and shall be mailed or otherwise furnished to the protester in such a manner as to ensure its receipt. If the protest is denied, the award to the lowest responsible bidder shall proceed. If the protest is upheld, the Intent to Award announcement must be nullified and all bidders notified. A new Intent to Award announcement may be prepared in favor of the next lowest responsible bidder, or (optionally) all bids may be rejected. The decision of the campus is final.

*SUAM 9775.*

7.31 Award of Contract: After protests (if any) have been resolved, and approval to award a contract has been received from CPDC (Major Cap) or Facilities (Minor Cap), the lowest responsible bidder is advised in writing that a contract is now officially forthcoming. An acceptance letter containing a written commitment to receive and execute the contract must be requested and then received back by the C.O.

*PCC 10725, 10781-10783; SUAM 9780-9780.02.*

7.32 Bid Document Files: The C.A. and the C.O. may jointly develop a complete file of Bid Documents on the Project for internal use and for transmittal to CPDC (if it is a Major Cap) for review. A duplicate file should be prepared and retained in Facilities or the Procurement Office while the original Bid Document file is transmitted to CPDC for review. The file may include, but not be limited to, the acceptance letter, a bid summary tabulation, a statement of remaining project funds, a notification of bid savings (if any), a contract requisition, and other pertinent bid documents. The campus may be directed to return any Major Cap Project savings at this point to the CPDC central reserve account. If the Project is Minor Cap, the campus retains the bid savings in its own accounts, pending potential claims against the Project.

*SUAM 9800.07.*

7.33 Completion of Required Supporting (ancillary) Contract Forms: The bidder receiving the contract award must submit several signed and sealed documents that are required by law prior to entering into a State contract. These are as follows: evidence of the appropriate contractor's license, notarized payment & performance bonds with related Powers of Attorney, Insurance Coverage Certification, Apprenticeship Standards declaration form, DVBE certification responses (when required), Vendor Data Record (Form 204), and a Drug-Free Workplace Certification.

*PCC 7103, 10821-10825; Civil Code 3247-3252; SUAM 9780.03.*

7.34 Contract Development & Assembly: The Contract is developed and assembled by the C.O. Its components typically include the Agreement Form (the face page of the Contract) Signature page, Notice To Contractors, the signed Bid Proposal, the plans & specifications (plus any addenda), Contract General Conditions, Supplementary General Conditions, and Special

Conditions. These and other Contract documents are referenced on the face page of the Contract as defined in Article 1.00 of the Contract General Conditions , and because of this reference do not all need to be included with the Contract when it is circulated for full execution.

The Bonds, Insurance Certification, and other supporting or “ancillary” documents to the Contract do not need to be integrated as components of the Contract itself. The Agreement Form must include (in addition to a description of the work to be performed and a listing of the Contract’s contents) provisions related to the remuneration for the work (progress payments vs. a lump sum); the term of the contract (usually a given number of days following the issuance of a Notice To Proceed; a daily rate for liquidated damages; funding sources and account numbers used; and a requirement to withhold at least 5% of the payments made as a retention—payable after the Notice of Completion has been filed with the County Recorder’s Office. Five fully developed counterparts of the Contract are then prepared for signatures.

*PCC 10826; SUAM 9780.03.*

7.35 State Form 13 - Extract of Public Works Contract Award: State Form 13 must be filled out and submitted by the C.O. to the State DIR Division of Apprenticeship Standards (DAS). This Form, among other things, assures the DAS that the Contract includes all the apprenticeship compliance language within it as required under Labor Code sections 1776 and 1777. The Form must be filed with DAS after the award is made, but before the Contract is executed.

*Labor Code 1773.3; SUAM 9780.07.*

7.36 Contract Execution: After the five fully developed unsigned counterparts of the Contract have been assembled, the C.O. transmits these to the proposed contractor to complete and sign. One or more additional copies, however, should be retained for filing purposes while the five counterparts are out to the contractor. When the completed documents and signed counterparts are returned, the C.O. examines them to assure that all documents have been properly processed and that no changes or alterations have been made. If none, the C.O. signs them. The Contract is now “executed,” but not yet “legal and binding” until they are endorsed by the CSU Office of General Counsel.

*SUAM 9780.03, 9780.04.*

7.37 Contract “Agreement Certification” or “Contract Transmittal Form”: To convey key data and for ready comprehension of the Contract (its purpose, a description of the work, how it is funded, and other important details) the C.O. prepares an Agreement Certification or a Contract Transmittal Form (optional for Minor Cap projects). Such forms should accompany the Contract counterparts as they are transmitted to others, including the Office of General Counsel, for review and approval.

*SUAM 9780.03.*



7.38 Contract Checklist (optional): A Contract Checklist may be completed by the C.O. to assure that all statutory, regulatory, policy and processing steps have been satisfied prior to submitting the executed Contract for legal endorsement. Only Major Cap contracts must be reviewed and endorsed by the Office of General Counsel.

*SUAM 9780.03.*

7.39 Endorsement of Contract by the CSU Office of General Counsel: This step is required under P.C.C. 10820 for Major Cap projects. The assembled and signed Contract counterparts along with the Agreement Certification, Contract Checklist (optional), and all ancillary documents are transmitted by the C.O. to the CSU Office of General Counsel for review and endorsement. If all requirements have not yet been met, the counterparts are returned to the C.O. to hold until all have been satisfied. Once the Contract has met all requirements, the Office of General Counsel endorses (signs) the counterparts, thus making the Contract legal and binding upon both parties. Four of the counterparts are then returned to the C.O. for distribution to the appropriate parties.

*PCC 10820; SUAM 9780.03.*

7.40 Distribution of the Executed/Endorsed Contract: Upon receiving four of the endorsed counterparts of the Contract back from the Office of General Counsel, the C.O. retains one counterpart for the file, and distributes the others to the Contractor, the C.A., and the campus Accounting Office (Accounts Payable). One copy of the Contract is prepared for the Project Manager's file.

*SUAM 9780.03.*

7.41 Contract Award Report: For all contracts of \$5,000 or greater, State Form 16 must be filled out and submitted to the State Dept. of Fair Employment & Housing (DFEH) or (optionally) the award data required on Form 16 must be recorded for periodic submittal with other awards on a consolidated quarterly report to the DFEH. Form 16 recaps the details of the award, with the data on it being captured by DFEH to help measure the State's overall contract awarding activity with small businesses.

*SUAM 9780.06.*

7.42 Return of the Bid Security Deposits: The bidders not receiving the Contract award have either an active bid bond on file with the campus or some other form of bid security deposit held in abeyance or deposited in campus accounts awaiting refund. Once the Contract has been executed and endorsed, all bid bonds, including the one deposited by the Contractor, must be released. If another form of security from a bidder was placed on deposit, it must now be released or refunded as well. If the campus originally placed any of these bid security deposits in the form of cash, check, bank draft, etc., into its accounts, an identical amount must be

returned by the campus in the form of a check or warrant.

*PCC 10784, 10804; SUAM 9780.05.*

7.43 Budgetary Savings: If any bid savings on a Major Cap project were not returned by the campus earlier when the bid amounts were first made known to CPDC (and thus requested), the savings are now determined jointly by the C.A. (with reference to the Project's tracking system) and the campus Accounting Officer. Once the amount is determined, Facilities is generally advised. Facilities, in turn, must notify CPDC of the amount. CPDC then issues a negative allocation order to the campus for the return of the savings, and an electronic fund transfer to CPDC is made.

For Minor Cap projects, the campus retains any budgetary savings in its Minor Capital Outlay accounts, pending later claims against the Contract. Alternately, it may apply these savings to other Minor Cap projects.

*SUAM 9036.*

7.44 Retention Funds: A minimum of 5% of each monthly progress payment requested by the Contractor shall be retained until after the work has been completed and accepted by the campus and a Notice of Completion has been filed with the County Recorder's Office. The C.A. verifies with the campus Accounting Officer what the contractually specified proportion (in percentage) of each future progress payment to the Contractor is that must be withheld until the final payment. This amount is known as the "retention funds." These funds are ultimately released only after all Stop Notices have been withdrawn (unless Contractor has "bonded around" them, as required under Civil Code Section 3196, prior to progress payments being made). Establishing a contractor's escrow account--at the request of the Contractor--can also satisfy the legal requirement for stop notices, in lieu of withholding retention funds from the progress payments.

*PCC 7107, 10851; Civil Code 3103-3197; SUAM 9803, 9805.*

7.45 Escrow Accounts: By requesting that an escrow account be established by the campus, with assistance from the State Treasurer's Office, the Contractor is presented with an optional way to receive full progress payments without having retention funds deducted from them by the campus. Under this arrangement, the major requirement of the Contractor is to deposit into a State holding account negotiable stocks, bonds, or other securities, of an amount equal in value to the required amount of retention funds. The Treasurer's Office then plays the role of an escrow agent. The campus Contracts Officer is responsible for getting the escrow account established, and then closing it at the Project's completion.

*PCC 6106.5, 10852; SUAM 9804.*

7.46 Pre-construction Meeting: This meeting is scheduled prior to the start of construction

and issuance of the Notice to Proceed. Attendees should include the Project Architect, Project Engineer, Contractor, Project Manager, Construction Inspector, Facilities staff representatives, and others as necessary for the Project. All issues regarding the roles and responsibilities of Project team members, the paperwork process, submittals, change orders, payment applications, site protocol and access, utility interruptions, project phasing, planned construction activities (work plan), and the Notice To Proceed date are discussed at this Meeting. A Construction Inspector for the Project may be selected or contracted prior to the meeting. Additional meetings may be held as needed.

In preparation for the Meeting, the C.A. develops pre-construction packages and agenda for distribution at this Meeting. Contract labels for two sets of the official Contract Documents are prepared for joint signature by the Contractor and the C.A. Each attendee must also sign an attendance sheet (to become a part of the Project File) at the beginning of the Meeting. Following the Meeting (or series of meetings) the Contractor shall prepare and submit to the C.A. a draft "Schedule of Values" upon which any progress payments can be based. In order to reach mutual agreement on it, this Schedule may be revised whenever necessary. It shall be endorsed by the C.A. within three weeks after the Notice to Proceed is issued.

*SUAM 9791.*

7.47 Contractor's Initial Construction Schedule: The Contractor prepares an initial construction schedule reflecting all the Contractor's planned work activities during the period of construction. The Critical Path Method (CPM) is required for all projects in excess of \$1 million. For other projects costing less, a sufficiently detailed bar chart is acceptable. Once drafted, the CPM is submitted to the C.A. for review in consultation with the Project Architect, Project Manager, and other selected individuals. Any needed revisions are discussed in the company of the Contractor. The Contractor makes changes to the CPM, as collectively agreed, and resubmits it to the C.A. for final approval. The approved CPM schedule becomes the baseline schedule and is used as an instrument for monitoring the Contractor's work. It is updated as required for periodic Progress Schedule Reports.

*SUAM 9800.01.*

7.48 Notice to Proceed: After the Contract has been fully executed, the Notice to Proceed can be issued. The issuance is generally based upon discussion among the Project team members at the Pre-construction meeting(s) and a start date mutually agreed upon by the C.A. and Contractor. This Notice should provide the Contractor a period of five (5) days advance notification prior to the beginning of work. Copies of the Notice should be distributed to others who play key roles in the construction work.

*SUAM 9781.*

7.49 Project File, Tracking System, and Reporting Activities: The Project File must be examined by the C.A. periodically to ensure that it contains all documents and materials

essential for an accurate review of the Project's history. Any Project documents not in the File must at least be referenced there. The Initial Construction Schedule, as collectively approved, becomes the baseline schedule and is used to update the Project's tracking system. Periodic Progress Schedule Report updates, as required from the Contractor, are used to further update both the tracking system and the Project File. For Major Cap projects, these or similar campus reports are transmitted to CPDC for informational purposes. CPDC uses the Reports to prepare its Quarterly Report to the State Department of Finance on Major Cap Outlay project appropriations.

*SUAM 9792, 9800-9801.*

7.50 As-Built Drawings: While construction work is on-going, the Contractor must maintain a set of As-Built Drawings that document any deviations from the Contract documents. These Drawings show how the work has been accomplished to date. Simultaneously, the Construction Inspector independently maintains a set of Inspection Drawings that record (presumably) that same information plus notations indicating which components of the Project have been inspected and approved. The Project Architect and Construction Inspector periodically review the Contractor's As-Built Drawings to ensure that they are being maintained in an accurate and orderly fashion. At the conclusion of the Project, the Contractor submits the As-Built Drawings to the Project Architect for review. Once accepted, the As-Built data is entered into the original construction documents by the Project Architect and become the "Record Drawings". These are then submitted to the C.A. for safekeeping in the Project File.

*SUAM 9800.06, 9832.01.*

7.51 Stop Notices & Preliminary Notices: A Stop Notice is a written notification to an awarding body that a legal action by a supplier or subcontractor has been taken that requires a specified amount (plus an additional 25%) to be withheld from payments due to the Contractor. To be valid, a 20-Day Preliminary Notice must first be filed with the campus whenever the supplier or subcontractor is not a first-tier sub, i.e., one that has no direct contractual relationship with the Contractor. The twenty-day limitation period is counted down from the time the supplies or labor is furnished to the Contractor.

A Stop Notice is usually filed when the Contractor does not make a timely payment for goods or services, but one can be filed under other conditions, as well. The C.O. is responsible for receiving and keeping a file copy of all Preliminary Notices and Stop Notices. The C.O. also coordinates with the C.A. to monitor the status of the Stop Notice as Contractor either pays what is owed or "bonds around" the Stop Notice while construction on the Project proceeds.

*Civil Code 3098, 3179-3214; SUAM 9811-9814.*

7.52 Progress Payments (PW): As certain elements of the work are completed, progress payments (less the specified retentions) to the Contractor are appropriate. These payments must be in accord with the amounts specified under the Contract following the completion of

designated Phases or milestones on the Project work. To authorize such a payment, the Contractor first submits a payment application to be discussed with the C.A. prior to approval. Once the payment application is approved (with changes or without changes) the Contractor submits a formal Request for Payment to the C.A. The C.A. confirms with the Project Architect and Construction Inspector that the payment is proper and due, and corresponds to the previously agreed-upon Schedule of Values. The C.A. then approves the Request for Payment and transmits one copy to the campus Accounting Office. A check or warrant is then issued to the Contractor. The C.A. makes proper distribution of all remaining copies of the Request for Payment, and updates the Project Tracking System.

*PCC 9203; 10851; SUAM 9803.*

7.53 Change Orders (and Field Instructions): To ensure continuing campus control over the Project activities, only the C.A. may initiate changes in the work during construction. Such changes may be requested by the campus, the Project Architect, or the Contractor. Change Orders (and Field Instructions) are the only authorized means available for altering an existing contract. Such changes may include but are not limited to changes in the Project's scope, methodologies or techniques prescribed, the completion date, work schedule changes, the number or amount of progress payments, and specifications for materials or brand & trade name products. A Change Order (or a Field Instruction) must be mutually acceptable to both contracting parties and can be executed only by their signatures.

Whenever there is a perceived need for a significant change to the Contract, a Contract Change Proposal is first prepared. The C.A. reviews the nature of the change and its budgetary implications with appropriate campus officials and determines whether or not to proceed with it. If the C.A. approves the Contract Change Proposal, copies of it are distributed to the Project Manager, the Project Architect (or Engineer), and the Construction Inspector. The Project Architect then prepares a Cost Request Bulletin (CRB) that in essence asks for detailed cost figures from the Contractor. Informational copies of the CRB are also distributed to the C.A., the Project Manager, and to others as appropriate. The Contractor's proposed costs are developed on the CRB and submitted back to the Project Architect. The costs are then evaluated by the Project Architect, the Project Manager, the Construction Inspector, and optionally--an independent estimator, for reasonableness. If the cost proposal is found to be reasonable, it is forwarded to the C.A. for examination. Once the cost proposal is deemed acceptable by the C.A., the C.O. is notified and a Change Order is prepared. The unsigned Change Order is transmitted back to the C.A. for a final review whereupon it is returned to the C.O. for transmittal to the Contractor for signature. After signing, the Contractor returns the Change Order to the C.O. The C.A. and C.O. then jointly sign the Change Order, making it an executed document. Copies are distributed to the Contractor, the Accounting Office, the Project Architect, the Project Manager, the Construction Inspector, and any others as appropriate.

If the proposed change appears not to impact greatly on the detailed specifications or the terms & conditions in the Contract, a less formal approach may be used by agreeing to implement a

Field Instruction. The Field Instruction does not entail preparation of a CRB by the Project Architect. Its use may also avoid possible delay by relying upon an informal cost not-to-exceed figure and a general agreement among the C.A., the Contractor, the Project Architect, and the Project Manager about the details involved in implementing the needed change. Only the C.A. and Contractor must approve the Field Instruction. Copies are transmitted to the C.O. and the Accounting Office for incorporation into their respective Contract files, thus assuring that the change information and cost data are documented for purposes of payment justification to the Contractor.

*PCC 7101, 10827, 10840-10842; SUAM 9820 et seq..*

7.54 Pre-final Inspection and “Punch List” Process: Once the Contractor determines that the Project appears to be complete, the C.A. is so advised. The C.A. then notifies the Project Manager, the Project Architect, the Construction Inspector, Facilities, and other desired or available experts to conduct a Pre-final Inspection. Any unfinished tasks are noted on a standard “punch list.” The punch list should describe in detail all things left unfinished on the contracted work. The C.A. presents a copy of the punch list to the Contractor along with a stated timeframe in which to complete the punch list items. Contractor completes the work on the listed items and then notifies the C.A. in writing.

*SUAM 9830 et seq.*

7.55 Final Inspection, Acceptance, and Project: A Final Inspection is conducted after all punch list items have been completed by the Contractor. The C.A. instructs the Project inspection team, headed by the Project Manager or the Construction Inspector, to perform the Final Inspection as soon afterward as it can be scheduled. Outside agencies such as the State or local Fire Marshal’s Office, OSHA, State Architect, FEMA, or others, may also need to be asked to participate in the Final Inspection. The C.A. is then notified of any identified deficiencies, in turn notifying the Contractor to correct them, if there are. The inspection team then performs a site survey, conducted to rid the construction site of any tools, hazards, etc., that may remain. After Contractor removes such obstacles, the C.A. advises the inspection team members once again, and each member must then submit back a statement that the facility is in compliance with the Contract and free from apparent defects.

The C.A. issues a certified Acceptance Notification to the Contractor, concurrently instructing Contractor to submit back a progress payment request (for 100% completion of work) along with a copy of the As -Built Drawings. The Contractor may be permitted by the C.A. to submit a list of “Items to Complete” which in essence is comprised of non-critical matters that may be completed by the Contractor after the facility becomes usable. In the meanwhile, the facility may be utilized.

After the Acceptance Notification has been transmitted to the Contractor, Facilities (or the C.A.) notifies the campus Risk Manager of pending occupancy for purposes of insurance and a transfer of liability coverage to the CSU Risk Pool.

The Contractor prepares and collects all operating and maintenance manuals, and submits them to the C.A. or to Facilities for appropriate distribution to campus personnel. The C.A. or Facilities is also to be advised of any surplus or excess materials left over from the Project in order to arrange for proper disposition. The Contractor may also be instructed to schedule and conduct equipment systems demonstration training sessions(s) with campus personnel.

Written statements attesting that the Project (as constructed) is in compliance with the Contract documents are prepared and submitted to the C.A. by the Project Architect, the Project Manager, and the Construction Inspector. The Project Manager or the Construction Inspector must complete a Project closeout checklist and forward it on to the C.A. for enclosure in the Project File. The C.A. advises the Contractor to submit a 100% payment application request along with deliverance of the As-Built Drawings (a copy shall suffice) and warranties (if any) on the Project or any of its components. A list of "Items to Complete", if any, that may be addressed by the Contractor at a later time is prepared and transmitted to the Contractor by the C.A.

*PCC 10849; Code of Civil Procedure 337.15; SUAM 9830.03, 9831.*

7.56 **Beneficial Occupancy:** In some instances, the campus may wish to utilize the Project facility (or a portion of it) before it has undergone final inspection or before a Notice of Completion has been filed with the County Recorder's Office. This is normally alluded to as "taking beneficial occupancy." To do this, the C.A., in consultation with the Project Architect, Construction Inspector, and campus Risk Manager, should first thoroughly weigh the ramifications of assuming the Contractor's risk & liability for on-site accidents before the facility officially becomes the property of the campus. Other potentialities that should be considered first are undetected defects and uncompleted work, potential effects upon the specified warranty period, and unresolved disputes or claims that could affect the Project costs. If the desire remains to go forward with beneficial occupancy, the C.A. works with the Project Manager, the Project Architect, and the C.O., to survey and perform a punch list review for the area to be occupied (plus any other "affected" areas) and prepare a Beneficial Occupancy Change Order to the Contract. The Project Manager secures signatures from the Architect and Contractor and returns the Change Order to the C.A. for final signatures. Signed copies are then distributed appropriately to all parties concerned. One copy is placed in the Project File. After this process is completed, the campus may occupy the facility area, effective as of the date and time stipulated in the Change Order.

*SUAM 9830.02.*

7.57 **Notice of Completion:** The C.A. requests the C.O. to prepare a Notice of Completion for signature. The Notice is delivered by the C.O. to the County Recorder's Office for local property listing. One stamped copy of the filed Notice is delivered to the C.A., and one to the campus Risk Manager. Upon receipt of the Notice the C.A. (or the C.O.) issues a letter to the Contractor (with a copy of the filed Notice attached) requesting submittal of the retention payment request within thirty (30) days following the recordation date of the Notice. Stop Notices (if any) must

be filed with the campus within the 30-day period after the Notice is filed with the Recorder's Office. After the 30-day period has passed and all Stop Notices have been settled and released, the C.A. places the recorded (stamped) Notice into the Project File and, unless there is a dispute, a claim, an uncompleted punch list or closeout item remaining, the way is cleared for issuing the final payment (retention funds) to the Contractor.

*Civil Code 3092, 3093, 3184; SUAM 9830.04, 9830.05, 9840, 9841.*

7.58 Release of Retention Funds and Final Payment: The contract retention monies payable to the Contractor (a minimum of 5% face value of the Contract plus 125% of the amounts specified on any outstanding Stop Notices) have been retained as required by law. At this point, the C.A. must be satisfied that all Project closeout requirements have been satisfactorily concluded by the Contractor. If a warranty issue or any other contractual matter remains unsettled, the C.A. may arrange to have 150% of the estimated dollar value of the dispute withheld from the "final" payment, pending an eventual settlement. The Contractor must be so advised. Once these considerations are made, and after the C.A. has issued a letter to the Contractor that officially accepts the Project, the Contractor may submit a final Request for Payment to the C.A. for the release of the available retention funds. The Request is held by the C.A. for thirty (30) days following the filing of the Notice of Completion and until any outstanding Stop Notices are cleared. The C.A. then signs & approves the Request and forwards it to the campus Accounting Office, after which a check or warrant may be issued in the amount remaining free for disbursement within the Project retention funds.

*PCC 7107; Civil Code 3186; SUAM 9834.01.*

7.59 CSU Claims Review Board: Any dispute or claim by the Contractor or campus that arises during the life of the Contract and cannot be resolved between the two parties must be settled by a CSU Claims Review Board. A formal hearing is scheduled and held. The Board members evaluate the dispute or claim and, as one body, prepare a finding. The finding is issued to both parties. The campus is obliged, by Trustees' policy, to accept the Board's ruling. However, the Contractor may continue the claim or dispute through any court of competent jurisdiction within the State's judicial system if the Contractor so elects.

*PCC 9201; 10843, 10844, 10845, 10848; SUAM 9833 et seq..*

7.60 Post-Project Performance Review: The Contractor's performance should be evaluated and recorded by the C.A. or Project Manager, for future reference. This must be done if the work performed was on a Major Cap project, and a copy shall be transmitted to CPDC for future reference in establishing system-wide pre-qualification lists. If the work was satisfactory, the CSU or the campus may wish the Contractor to bid again on future contracts. The signed performance report is placed into the Project File.

*PCC 1103; SUAM 9835 et seq..*



7.61 Internal Closure and the Preservation of Project File Contents for Audit: After the Project has been completed, the C.A. updates the Project Tracking System records to establish the Project budget and show that all work has been performed and that all expenditures assignable to the Project have been made against it. Any unspent balances that are indicated should be compared with the Accounting Office's Project budgetary & expenditure accounts. If there is an agreement between the Tracking System records and the Project accounts, any residual amounts are presumed to be budgetary savings. If the Project is Minor Cap, these savings are retained in campus accounts for possible use in subsequent projects. If the Project is Major Cap, the savings must be transmitted to CPDC for contingency application to system-wide claim settlements. Finally, the C.A. assures that all Project documents, including a copy of the Project Record Drawings, are inserted into the Project File for future reference and audits. This File must remain intact and available for a minimum of ten (10) years.

*PCC 10849; SUAM 9842.*

7.62 Project Capitalization: After receiving the filed (stamped) Notice of Completion from the County Recorder's Office, the C.O. transmits a copy of the Notice to the Accounting Office for the express purpose of capitalizing the Project into a campus asset on the General Ledger. All recorded costs directly related to the Project are totaled and recorded as a consolidated debit entry to the Capital Assets account (with balancing credit entries made to close out the Project expenditure accounts). For State or CSU Trustees' projects that are split-funded with one or more other funding sources such as a Foundation or another campus auxiliary organization, the Project capitalization must nevertheless be shown as a single asset on the campus General Ledger.

If the non-State entity has made payments directly to the Project Contractor(s) for its share of the Project costs instead of transferring its share of the funding to the State-side project account(s), it may necessitate a transfer of ownership interest in the Project from the non-State funding source to the campus in exchange for an on-going or limited-term beneficial use, leaseback, or shared occupancy of the finished Project. Such terms as these, however, must be stated as such in the original ground lease or agreement between the parties prior to the start of the Project. The transfer of ownership interest can be accomplished via a Gift, Donation, or Bequest from the non-State entity to the campus.

*SUAM 9870-9874*