

California Uniform Public Construction Cost Accounting Act (CUPCCAA)

August 15, 2018

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What is CUPCCAA (the Act)?

- Enacted in 1983 under section 22000 et seq. Public Contract Code.
- Allows public agencies to use “Force Account” labor to perform public projects.
- Provides alternative bid limits for public works projects.
- Simplifies procedures for authorization of emergency work.

Bid Limits

- General Bid Limits. California school districts must formally and publicly bid contracts for construction projects over \$15,000, unless there is an exception. (Public Contract Code (“PCC”) § 20111)
- CUPCCAA Exception. Exception to this general rule for school districts and other local agencies that elect to be subject to the California Uniform Public Construction Cost Accounting Act (“CUPCCAA” or the “Act”). (PCC §§ 22000 – 22045)
- Informal Bid Limit: \$ 45,001 - \$175,000
- Formal Bid Limit: \$175,000

What is Force Account?

- Force Account refers to work performed on public projects using internal resources. Project costs for force account work include the following:
- Direct Costs:
 - Labor including all benefit costs.
 - Equipment charged on an hourly rate including depreciation, insurance, maintenance/repair, fuel and oil, tires and grease, etc.
 - Cost of materials and supplies with a total unit value of \$25 or more including discounts, tax, and shipping.
- Indirect Costs:
 - Other labor including inspection, clerical, and supervision.
 - Other expenses including utilities, telephone, temp. fencing, etc.
 - Overhead Costs:
 - Either the agency's actual calculated overhead rate or 30% of direct costs.

General Public Works Requirements

- Contractor Must Pay Prevailing Wages. (Ed. Code §17424)
- Payment Bond Required.
 - Civil Code § 3247: “Every original contractor to whom is awarded a contract by a public entity . . . in excess . . . of \$25,000 for any public work shall file a payment bond.”
 - Get a performance bond too.
- Fingerprinting. (Ed. Code §45125, et seq.)
- Field Act Compliance Required. Construction is subject to all State approvals, as set forth in Education Code sections 17280 through 17313. (Ed. Code §17421)
- Change Orders. Change orders are only permitted to a maximum contract total of \$45,000.
 - Note: Any non-emergency work done by force account in excess of \$45,000 is a violation of the Act.

Implementation of CUPCCAA

- Governing Board approves resolution to become subject to CUPCCAA procedures.
- District files resolution with Controller.
- Entire District becomes subject to the Act.
- Board enacts informal bidding regulations under PCC § 22034 and may establish a list of contractors to be notified of potential projects and procedures for informal bidding.

Registration of Contractors (Voluntary)

- Each November, District mails written notice to designated trade journals inviting all licensed contractors to submit the following information:
 - Contact name and mailing address
 - Contact phone number, fax number, and email address
 - Type of work contractor is interested in performing
 - Type of work contractor is licensed to perform
 - Contractor's license class and number
- District creates updated contractors list on January 1.
- May include any contractors it desires.
- Contractors may be added to list by providing required information at any time.
- Commission recommends inclusion of all contractors who submitted one or more valid bids during preceding year.

Procedures for Informal Bidding

- Procedures for informal bidding:
- District mails notice inviting bids at least 10 days before bids due to:
 - All contractors on list for category of work; or
 - Specified trade journals; or
 - Both.
- Notice should describe project in general terms with information for how to obtain detailed information and time and place for submission of bids.
- Will often include site walk, where appropriate.
- It is recommended District use standard bid documents or obtain modified short version documents from legal counsel.

Procedures for Informal Bidding, Cont'd.

- Notice need not include drawings, plans, etc., unless required for preparing bid.
- Governing Board may delegate authority to award informal contracts to specific staff members.*
- If all bids received exceed \$175,000, Governing Board may pass a resolution by a four-fifths majority awarding contract at \$187,500 or less to lowest responsible bidder if it determines District's cost estimate was reasonable.
- *Note: EC 17605 requires all delegated transaction be approved or ratified within 60 days.

Procedures for Formal Bidding

- Public projects of more than \$175,000 shall be let to contract by formal bidding procedures, including:
 - Detailed architectural plans, voluminous bid and contract documents.
 - Newspaper advertising for 14 days before bid opening.
 - Notice in trade journals 15 days before bid opening.

NOTE: Public Contract Code 22038(c) states that if no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with this article.

Emergency Contracts

- In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two.
- By a 4/5 vote of the governing board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.
- By a 4/5 vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed).
 - Code is in conflict with boards that meet on a monthly basis.

Emergency Contracts: Public Contract Code

- PCC sec. 22035 (“Emergencies”) under CUPCCAA states that a public entity must comply with PCC sec. 22050 under CUPCCAA if the public entity is under CUPCCAA and is not noticing bids for emergency work.
- PCC sec. 22050 states that a 4/5 vote of the Board is all that is needed to approve that emergency contract, to provide evidence of the emergency, to delegate authority, etc. (Subsections (a) & (b).) **There is no requirement in sec. 22050 for a unanimous vote or for County Superintendent approval.**
- PCC sec. 22050(f) references back to PCC sec. 22035, by stating: “This section applies only to emergency action taken pursuant to Sections...22035”

Accounting Procedures Under CUPCCAA

- Detailed accounting procedures for direct and indirect costs must be followed.
- The Commission has determined that compliance with the California Schools Accounting Manual meets the requirements of the Act.
- The Commission feels that all cost elements -- personnel, materials, supplies and subcontracts, equipment and overhead -- associated with a project must be recorded and reported at the project level.

CUPCCAA Provisions

- The entire District would be subject to CUPCCAA, including repairs and maintenance.
 - Therefore, the District would be required to informally bid for repairs and maintenance within the "donut hole" from \$45,001 to \$90,200 (the current bid limit for repairs and maintenance).

What is a “Public Project”?

- Public Project per PCC §§ 22002(c) is defined as:
 - (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
 - (2) Painting or repainting of any publicly owned, leased, or operated facility.

Repairs & Maintenance

- Unlike construction work, there is no regulatory definition for "maintenance," nor a specified distinction between terms such as "maintenance," "repair," or "refurbishment."
- "Maintenance" means keeping equipment or a structure in proper condition through routine, scheduled or anticipated measures without having to significantly alter the structure or equipment in the process. (OSHA - Tindell Letter of Opinion)
- The scope, cost, and complexity factor into whether a project is maintenance or construction:
 - Example 1: Replacing a utility pole with a like pole would be maintenance. Replacing a utility pole with a pole with new and improved technology, that would be considered construction.
 - Example 2: Replacement of a steel beam in a building had deteriorated with a new, but identical beam would be considered a construction repair rather than maintenance because of the replacement project's scale and complexity.

QUESTIONS?