

**California State University
Channel Islands**

**Procurement and Contract Services
Operations Manual**

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CSU Channel Islands Procurement and Contract Services

OPERATIONS MANUAL

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INTRODUCTION

The CSUCI Procurement and Contract Services Operations Manual is intended to serve as a general guideline for CSUCI employees who conduct business transactions for the benefit of CSUCI.

There are six sections in this manual. Section 1 addresses the subject of “Authority for Transactions”—i.e., how the responsibilities for procurement operations are transferred within the CSU from the Trustees to other tiers of the organization. Section 2 relates to requirements common to all transactions—primarily those for purchases, service orders, and standard agreements. Section 3 addresses transactions solely for commodities, while Section 4 shows requirements that are specific for service acquisitions. Section 5 contains certain requirements that are unique to Information Technology (IT) and computer transactions. Section 6 summarizes the requirements for public works projects.

The manual reflects State of California Statutes, CSU Trustees’ system-wide policy, and CSU procurement procedures and practices that have been implemented as needed.

The legal references from California Statute are found in the Public Contract Code (PCC) and the Education Code. Other California Codes are cited herein as well. The website for finding California Codes is <http://www.leginfo.ca.gov/calaw.html>.

Note: Policy for Public Works contracts and Professional Services agreements related to Public Works can also be found in (1) the State University Administrative Manual (SUAM), especially Sections X-XII, (2) the Major Capital Outlay Projects Construction Phase Manual, and (3) the Architect & Engineering (A/E) Design Process and Requirements training manual.

THE ROLE OF CSUCI PROCUREMENT AND CONTRACT SERVICES

CSUCI Procurement and Contract Services (“Procurement”) carry out the purchasing, contracting, and support services functions for the campus. Procurement is responsible for ensuring that acquisitions of all 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. Procurement staff members are committed to providing reliable, cost effective, timely, innovative and quality service for the campus.

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

Procurement subscribes to fundamental principles encompassed in 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 important to the effective and efficient total operations of CSUCI,
- A firm belief that it is in CSUCI’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 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. This 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 \$250,000 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 a planned purchasing program or master agreement 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.

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 615, 667, 669; CSU Policy 102.

- 1.04 Vice President's Authority: The Vice President for Finance and Administration at CSUCI has received delegated authority from the President 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.

- 1.05 Procurement Authority: The manager of Procurement & Contract Services has received delegated authority from the Vice President to purchase, sell, lease, or license personal property and acquire or provide services in accordance with Trustees' policy and law and may represent the campus 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 manager has delegated authority to and assigns various staff members of Procurement specific responsibilities for transactions falling within specialty areas that may require certain training, experience, and skills.
- 1.06 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 be requested by a check request form and include commitments or obligations for such things as advertisements, postage & mailing charges, petty cash fund reimbursements, stipends, fees for guest artists or lecturers (honoraria), accreditation fees, travel, relocation or other personal reimbursements, books, subscriptions, publications, registration fees, medical exams, insurance premiums, membership fees, and utilities.

An additional delegated purchasing authority known as the Procurement Card Program allows participating campus departmental staff to expend department funds directly for commodities. Budget, Procurement & Support Services administers this program. Low dollar value purchases are made via the issuance of procurement credit cards to campus faculty and staff that apply and qualify for participation in the program. The primary purpose of this program is to reduce processing time, costs, and delivery delays. 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 temporarily or permanently increase established limits should be submitted via the program chair/department head and approving official to the program administrator in Budget, Procurement & Support Services. The administrator maintains a file of all current delegations of acquisition authority (signature authorizations) for purchases placed under this program.

Section 2

Requirements Common to All Transactions

The following paragraphs apply to all procurement transactions, whether acquisitions of personal property (commodities) or services, information technology (IT) orders & contracts, and the sale, lease, license and disposal of CSUCI personal property. This excludes public works, which is embodied in Section 6. In accordance with the California Legislature's intent, the requirements of Section 2 are designed to achieve:

- a. An explanation of laws and policy with respect to competitive bidding requirements;
- b. The protection of the public from the misuse of state funds;
- c. A fair opportunity for all qualified bidders to enter the bidding process, thereby encouraging competition in a manner conducive to sound business practices and state fiscal policies;
- d. The prevention of favoritism, fraud, and corruption in the awarding of state contracts.

PCC 10300, CSU Policy 200.

2.01 Defining Characteristics of a Purchase Order, Service Order, or Contract:

- 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 being obtained from a provider of such services. The buyer 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.

PCC 10300 et seq.; 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. It normally results in the best use of CSUCI's limited financial resources, prevents favoritism, and it provides a professionally viable and positive climate in which the University 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, electronic bidding processes, 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 telephone calls to obtain informal quotes.

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 is rejected for noncompliance as the result of disqualification of the bid or the bidder, a formal rejection notification must be sent to that bidder either by letter or electronic transmission. 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.

There are occasions when the solicitation of competitive bids may be impractical or inadvisable. These are exceptions to the rule. They include the following:

- a. In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or the protection of CSUCI property and programs;
- b. The proposed contract is with a State or federal agency, a local government entity, or an auxiliary organization of CSUCI;
- c. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered;
- d. Contracts for the express purpose of obtaining non-CSUCI legal counsel or of obtaining expert witnesses for litigation (either of these must be submitted to the Office of General Counsel at the Chancellor's Office for approval).
- e. Contracts with business entities operating disabled workshops which meet the criteria stated in Section 19404 of the Welfare and Institutions Code;
- f. Contracts that have been certified by an authorized campus official not lower than the vice president for Finance and Administration to (a) be non-biddable (products or services being available from a single source only), or (b) best serve the interests of CSUCI by not being subjected to competitive bidding.

PCC 102, 1103, 10300 et seq., 12100 et seq.; CSU Policy 201, 202.

2.03 Solicitation Methodologies: The selection of a vendor or contractor to satisfy a university need may not be necessarily based upon the lowest responsible bid or quote received. While price must be a prime factor, the quality of the product or service, provider reliability, warranties, and several other criteria also can enter into the decision to award an order or contract. Awards are based upon one of three different solicitation approaches: (1) A Request for Quotation (RFQ), awarded on the basis of the lowest responsive quote attained from at least three vendors, (2) an invitation for bid (IFB) based upon the acceptance of the lowest responsible bid for a product that has been fully described with detailed specifications accompanying the solicitation, or (3) A request for proposal (RFP), 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 “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), if needed, 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 an IFB or RFP (either formal bid solicitation), if multiple encouraging responses are received. An RFI can also be used at the beginning of or during any part of a solicitation.

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 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 respondents 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 or RFI’s, 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 such as an RFP or IFB will be issued.

“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 proposed supplier 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 proposed supplier who had the next-highest scored evaluation, etc.

PCC 1103, 10300 et seq., 12100.7; CSU Policy 203 et seq.

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 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 task or meet 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).

Sole source purchases are permitted only when a determination has been made and approved in writing, that only one source exists for the required product or service. A requirement for a proprietary (or sole brand) item does not necessarily justify sole source purchases, as more than one potential bidder or supplier may exist who can supply that item.

The designated authority, not lower than the vice president for finance and administration at CSUCI, shall make the determination as to whether a purchase has been adequately justified in writing for a sole source award. For sole source purchases of \$250,000 or greater, a copy of the RGS, the justification, and other pertinent documentation, must be forwarded to the Chancellor’s Office Contract Services & Procurement (CS&P) for review and approval prior to execution of the contract.

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.

Procurement & Contract Services provides Sole Source/Sole Brand Justification Forms for campus use. A completed form is required for sole source/sole brand requests that entail commodity or services of \$50,000 or more. Procurement staff, prior to their acceptance, evaluates the adequacy of the information provided by the requester. All sole source/sole brand requests for acquisitions over \$100,000 require the approval of the vice president for finance and administration.

PCC 10318, 10339; CSU Policy 206 et seq., 210.07.

- 2.05 Exclusion of Vendors or Contractors from Bidding: A vendor or contractor may be removed or suspended from CSUCI's list of potential bidders and be prohibited from participating in any of the university's bid processes if there has been a failure without good cause to perform in accordance with the terms of a past contract with CSUCI, 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 365 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 CSUCI'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: CSUCI standard procurement forms are available on the Procurement website at <http://www.csuci.edu/campserv/finance/>. 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 on Outlook shared public folders 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 CSUCI Procurement.

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 set up as standard comments in the purchasing system and may be printed onto the PO document itself. 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 (PO) for convenience, and thus need not be detailed in print. For a particular contract, P.O., or service order, additional provisions may be added whenever needed. , and certain items of the General Provisions in the exhibit selected for use may be deleted by way of supplemental General Provisions 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 or Fax Transmission: CSUCI is authorized, under California law, to enter into and make payment on contracts by means of electronic transmission (such as e-mail, fax, 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 Payee Data Record (State Form 204): Each vendor or contractor (except for a State or other governmental entity) doing business with the State of California is required to complete a State of California Form 204, Vendor Data Record form. The form is provided to the vendor or contractor by Procurement or requesters and must be completed, signed, and returned to Procurement before Accounts Payable may make payment. This is due to taxed earnings reporting requirements (Form 1099) that must be filed by the university.

Revenue and Taxation Code 18637; CSU Policy 213.01.

- 2.10 Vendor & Contractor Bidder Files: Procurement 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: The Common Management System (CMS), also known as PeopleSoft financials, is a customized computer software system that permits Procurement staff to readily convert a Request for Goods and Services (RGS) into 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 RGS as well as from filed data residing in Procurement 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 Request for Goods and Services (RGS) Processing: Employees from campus instructional and administrative departments, when authorized, may complete and submit a Request for Goods and Services (RGS) to Procurement to be processed and transformed into a purchase order, a contract, or a service order. The requester should fill out the form completely including information 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 signature in ink of the person authorized to approve the expenditure from the account. The Procurement staff will not take action on any request until a completed and authorized RGS is submitted.

CSUCI buyers have the responsibility to attempt to source the item requested in order find a lower price from another responsive vendor for an item with the exact specifications. When a RGS form is received by Procurement it is date-stamped or otherwise recorded as to the date and time it is received, and the authorized signature is verified. It is assigned to a staff member for order processing and placement. This involves assigning commodity or other codes. If an error is discovered on the RGS, it must be rejected until the requester can make the correction. Some corrections may be made via telephone, email or fax, but some must be returned to the requester. Once the RGS is accepted, the buyer reviews potential supplier or vendor sources (including any suggested by the requester). When the estimate or quoted price is within the limits of an informal acquisition a purchase order, contract, or service order may be prepared and issued to the supplier who appears to be the best source. When the estimated cost necessitates formal bidding, the assigned staff member issues a formal bid solicitation document, either an Invitation For Bid (IFB) or a Request For Proposal (RFP). Bids and proposals that are received by 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 RGS at any time.

The Vice President for Finance and Administration or designee establishes deadlines for the submittal of RGS’s toward the end of each fiscal year. These deadlines are outlined in a Year End Calendar notification that is prepared annually. RGS’s submitted after such deadlines have passed may be rejected and returned unprocessed to the requester.

- 2.13 Signature Verifications: Procurement visually inspects approval signatures on hard copies of RGS’s and other procurement documents that are submitted for processing and compares them to signatures on file.

- 2.14 Blanket Orders for Commodities or Services: These are primary source agreements designed to accommodate CSUCI 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.

CSUCI Accounts Payable 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 (for commodities or services), or unless the Vice President for Finance & Administration has approved a sole source justification. 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 (for commodities or services) 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.

- 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 Accounts Payable and are not typically supported by the issuance of purchase orders, service orders or contracts. The vendor should send invoices to Accounts Payable, who then route the invoice out to the appropriate campus unit's approving authority. The department requester or approving authority date stamps the invoice when received, completes a Check Request for if necessary, obtains appropriate signatures, and forwards the invoice back to Accounts Payable. 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. Properly coded invoices for public utilities charges (electricity, telephone, natural gas providers, etc.) should also be submitted directly to Accounts Payable.

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 CSUCI 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 CSUCI 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 Enabling Agreements (MEA's): CSU Master Enabling Agreements (MEA's) are instruments of a pooled purchase or consortium solicitation whereby all CSU campuses may participate and take advantage of volume-discounted acquisitions. CSUCI 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. If there is more than one MEA and the procurement is above \$50,000, then 3 MEA's prices must be compared. A directory for all CSU MEA's, CSU site licenses, pricing for computer software and subscription databases is maintained at the website <http://www.calstate.edu/csp/>.

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

CSU Policy 204.

- 2.18 Pricing Agreements & Schedules: These are provided by vendors and are negotiated to take advantage of a vendor's best pricing to CSUCI. Such best pricing is based upon an estimated aggregate volume of the product(s) sold to CSUCI, 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 any time a formal bid solicitation is not required. It may also be used to compare 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.

- 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. A Procurement staff member can determine the availability of a commodity or service under contract with the State by referencing "The Checklist of Effective State Contracts and Price Schedules." If substantial savings are realized through the use of a State contract then it is preferable to use the State or Western States Contracting Alliance (WSCA) contract.
<http://www.pd.dgs.ca.gov/masters/default.htm>
<http://www.pd.dgs.ca.gov/WSCA/default.htm>

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.

While State Contracts and CMAS agreements may be used without soliciting further competition, Bulletin 02-19 revision 4 clarifies this state business practice. For all non-IT services acquisitions, based on CMAS and State Master Agreements, shall be competitively bid resulting in offers from three vendors including one small business, if available, and shall not exceed \$250,000. If less than three offers are received, documentation of solicitation methods must be included with the contract documentation. Offers from small businesses that have established CMAS contracts shall be given first priority.

<http://www.pd.dgs.ca.gov/cmas/contracts.htm>

<http://www.calstate.edu/CSP/Bulletins/02-19rev4.pdf>

The use of a DGS-negotiated State contract (inclusive of CMAS, Price Schedules, etc.) normally provides a discount savings but requires a fee of approximately 2% to be paid to DGS. When a RGS is submitted to Procurement, the staff member who processes the RGS 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 can take place well after the orders themselves have been fulfilled.

CSU Policy 204, 225

- 2.20 General Services Administration (GSA) Contracts: The GSA division of 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, CSUCI 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 RGS is received, Procurement 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. If there is more than one GSA contract for a particular procurement and the procurement is above \$50,000, then 3 GSA contracts must be compared.

Gov. Code 14846; CSU Policy 204.03.

- 2.21 Use of the State Department of General Services (DGS): The Department of General Services (DGS) offers 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 or function, the DGS or other department or agency shall contract with the CSU to perform the service or function."

CSU Policy 225.

- 2.22 Small/Micro Businesses and the Office of Small Business Certification & Resources (State):
CSUCI supports the spirit of the Legislature's declaration as set forth in the Small/Micro Business Procurement and Contracts Act (Gov. Code 14835 et seq.):

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 goods & services for the State be placed with such enterprises;

To provide small businesses an opportunity to request a 5% bid preference, a Small/Micro Business Preference Form or equivalent advisory statement shall be included in all bid solicitations for the procurement of goods and for service agreements. Evidence of certification by the State Office of Small Business Certification & Resources (OSBCR) – usually via a copy of the OSBCR approval letter – is required from the bidder in order for a bid preference to be granted.

The definition of a Small Business includes the following:

- An independently owned and operated business;
- Not dominant in its field of operation;
- The principal office is located in California;
- The officers are domiciled in California;
- Together with affiliates is either:
 - a. A service, construction or non-manufacturing business with 100 or fewer employees, and average annual gross receipts of ten million dollars (\$12,000,000) or less over the previous three years;
 - b. A manufacturer with 100 or fewer employees.

The definition of a Micro Business, as a subset of Small Business, includes the following:

- An independently owned and operated business;
- Not dominant in its field of operation;
- The principal office is located in California;
- The officers are domiciled in California;
- Together with affiliates is either:
 - c. A service, construction or non-manufacturing business with 10 or fewer employees, and average annual gross receipts of two million five hundred thousand (\$2,750,000) dollars or less over the previous three years);
 - d. A manufacturer with 25 or fewer employees.

In order to comply with the requirements of the Small/Micro Business Procurement and Contract Act, CSUCI must report to the OSBCR annually on the number and dollar amount of contracts and purchase orders awarded to small businesses. This Report is to be sent via CS&P in the Chancellor's Office. A Procurement Office staff member has been designated as the Campus Small Business Coordinator and is responsible for this function as well as the promotion of all Small Business outreach activities and the coordination and reporting of such activities performed on campus.

A Small Business Advocate may be on staff in the CS&P Department at the Chancellor's Office and would serve as a single point of contact for small businesses and campus coordinators, as needed. The Advocate's responsibilities include:

- Making information about pending solicitations available to State-registered small business firms that are capable of meeting the CSU's business needs;
- Actively soliciting offers for goods and services from small business firms;
- Helping ensure that prompt payments are made to small business firms that have provided goods or services to the CSU.

Gov. Code 14835; PCC 10301-10303; CSU Policy 216.

- 2.23 **Disabled Veteran Business Enterprises (DVBE) and Activity Reporting:** A DVBE goal of 3% of total expenditures has been established which provides the overall percentage of dollar amounts expended each year by CSUCI for contract awards, including purchase orders. An annual activity report shall be prepared and submitted by Procurement to the CS&P Department of the Chancellor's Office for system-wide consolidation, and then transmitted to the Governor's Office. Bidders for IT-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 the Public Contract Code, Section 10115.15.

PCC 10115 et seq.; Title 5, Sec. 43870 et seq.; 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 CSU campuses are encouraged, though no longer required, to procure any available comparable goods or services produced by the Prison Industry Authority (PIA). The campus may contract, without competition, with PIA for goods and services; whenever it is determined that PIA can provide the best value for the campus. It is the responsibility of Procurement 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:

A. License Agreements

This procedure 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.

This procedure shall include each contractor, subcontractor, vendor, or manufacturer that is engaged in a manufacturing process including assembly and packaging of a CSU licensed product.

CSUCI is opposed to any acts or omissions by a contracted licensee that would constitute labor abuse. Officers and employees of CSUCI 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.

B. Procurement Contracts

All CSU contracts for the procurement of laundering of apparel, garments or corresponding accessories or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require the contractor to certify that it has maintained a “sweat-free” workplace in compliance with Public Contracts Code Section 6108.

PCC 6108; Chancellor’s Executive Order 718, CSU Policy 210.10.

- 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 PO or contract awards of \$50,000 or more. For awards of less than this amount 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.

Gov. Code 12990; CSU Policy 220.

- 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.” CSUCI 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: CSUCI 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 campus, are obtained at a fair market price, and are made convenient to the campus to obtain.

Welfare Code 19403, 19404; CSU Policy 219.

- 2.33 Funding Source Designations: The requester should designate an appropriate funding source (also known as a CMS chartfield string) on the RGS before sending it to Procurement for processing. The funding source should be one that is under the authority of the person who approves the RGS by signature. After an invoice has been processed against the order or contract, the funding source can be changed or corrected only by Accounting via an accounting journal entry.

- 2.34 PO Log: Each RGS is date stamped as it is received in Procurement. Procurement maintains an electronic spreadsheet PO log of all RGS’s received, with entries recorded daily as they are received. Entries are made sequentially in the PO Log as the RGS’s are received, and a buyer or contract specialist is assigned for processing it. The PO Log tracks the status of the RGS to PO process. If a RGS must be rejected, the reason is noted in the log and then returned to the requester for corrections or other appropriate actions to be taken.

- 2.35 RGS’s for Subsequent Fiscal Years: RGS’s submitted to Procurement for commodities or services to be purchased with funds budgeted for the following fiscal year must be submitted as a future-year RGS and be clearly identified as such with the following fiscal year’s designation plainly marked on it.

- 2.36 Year End Deadlines for Submitting RGS’s: Toward the latter half of each fiscal year a notification and calendar of deadlines is prepared and transmitted by the Vice President for Finance and Administration or designee to advise campus departments of the deadlines established that year for submitting RGS’s. The deadlines on this notification vary, depending upon the funding used and type of acquisition being requested.

- 2.37 Purchase Order and Contract Coding Designations: Codes streamline data collection necessary for reporting requirements. Procurement personnel apply some of these codes such as acquisition or commodity codes, while others codes such as the accounting string must be furnished on the RGS by the requester who use the chart of accounts or other coding guides. Since codes may be revised, all individuals responsible for preparing and processing RGS's should reference the most current version of any coding instructions. The chart of accounts may be found on the Budget and Support Services website.
- 2.38 Commodity and Service Codes: A commodity or service code is assigned to each type of acquisition. Procurement staff members assigned to process RGS's must place an appropriate commodity code in the designated data block of a computer screen for every RGS received.
- 2.39 Open PO Report: The Open PO Report shows all open and currently encumbered PO's. Procurement staff generates this report from the CMS financial system on the first business day of each month. The report is available to all departments with current activity against their funds.
- 2.40 Change Orders to reflect Price Changes or Other Modifications: Requesters should submit a Change Order Request and Procurement prepares a Change Order in response to an revised quote or other advisory from the supplier or end-user 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. A Change Order shall not be executed, however, in response to a request to make changes on a RGS-in-process. Such requests can be honored by Procurement staff on the RGS itself prior to its conversion to a formal order and issuance to a supplier. Such requests must be documented (via memorandum, e-mail, fax, or other written correspondence) in order to have the RGS changed. Occasionally, changes to a RGS might be accommodated more readily by canceling entirely and submitting a new RGS. In the event the PO has already been issued, the Procurement staff member assigned the responsibility for placing the order may be able to contact the supplier and cancel the original order before it is filled. However, the Procurement staff member must be advised of the requester's intended action before the replacement RGS is prepared and submitted.
- 2.41 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 staff member originally assigned the RGS 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 recalled). 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 requester's attention. If the cost is accepted, that cost must be covered either by a change order (Change Request Form) or a new RGS 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”), CSUCI 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.

- 2.42 Split Funding of Orders: Multiple funding sources may be specified on a RGS whenever appropriate. For example, the General Fund and any special 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 should be clearly identified with complete chartfields strings for each line on the RGS.
- 2.43 DGS Billing Codes: These are account code numbers assigned in numerical block (or range) sequences by the State Department of General Services (DGS) to various state agencies (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 Procurement Division of the State of California’s Department of General Services (DGS/PD) will bill each state and local government agency for use of California Multiple Award Schedule (CMAS) contracts equal to a determined percentage of the total value of each purchase order, except for purchase orders issued to certified small businesses because they are exempt from the Procurement Division administrative fee.

The charge also applies to the finance cost for financed transactions. See CMAS Agency Packet, Section 9, for Rental Finance and Lease Policies. The DGS/PD will invoice state and local government agencies directly. The administrative fee is not included on the purchase order, not invoiced by the Contractor and not remitted by the agency before an invoice is received. The agency can ask the Contractor to pay the administrative fee (Contractor may decline). In this case, the agency forwards the DGS/PD invoice to the Contractor and the Contractor issues a check to the Procurement Division for the invoice amount. When the total of the agency purchase order is higher than the invoiced amount, the agency must issue an amendment to the purchase order to lower the total amount or DGS/PD will bill the administrative fee against the original higher total.

CSU Policy 225; CMAS Services Guide, Section 2

- 2.44 Delegation of Purchases: The development of methods for reducing the costs of executing low-dollar value 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 CSUCI supports. Authority to acquire low-dollar value commodities averaging between \$500-\$2,500 directly from a vendor has been delegated to most individual offices on campus, via a procurement credit card system.

Specific parameters exist under which those who receive this delegation must operate. These parameters have been established via the procurement card policy and are routinely monitored jointly by Accounts Payable and Budget & Support Services for compliance. They include the prohibition by State law, CSU Policy, or CSUCI policy of purchasing certain substances, products, and services that may not be acquired under delegated authority. Campus entities that have received the delegation have the responsibility of knowing and complying with the procurement card policy.

CSU Policy 205

- 2.46 Procurement Cards: Low-dollar value purchasing authority is requested for instructional and administrative areas via formally signed procurement card participation form that is approved for participation by the President or designee, the Vice President for Finance & Administration. A card may be used to pick up items in person, or for placing orders by telephone or fax, Internet orders, or mail-in orders. Cards are made available through a contract between CSUCI and an outside bank-affiliated service provider. Budget & Support Services can provide detailed instructions for use of the cards including written and enforced prohibitions, limitations and restrictions.

The decentralization of purchasing authority on campus for low-dollar value acquisitions carries with it a responsibility to use the campus's dollars wisely.

Activity reconciliations are prepared and submitted online monthly by cardholders to their department heads, program chairs and/or other authorizing official for examination and approval. They are then transmitted to Accounts Payable 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 established.

CSU Policy 205.

- 2.47 Price Justification on Non-Formal Acquisitions: Competition is sought, via either formal or informal solicitation, for transactions under \$50,000 for commodities or services whenever Procurement determines that the competition is necessary to develop a source, validate prices, or for other sound business reasons. Procurement retains the right to source any transaction that is \$10,000 or higher. Informal solicitations may be secured in writing, mail, fax or email quotes are acceptable. The number of providers from whom quotes or bids are solicited is the responsibility of Procurement 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 manager 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 micro/small business and other reporting goals such as disabled veteran business enterprise (DVBE) and recycled content reports.

PCC 10301; CSU Policy 203.03, 401.

- 2.48 Confirming Orders: Standard policy does not permit CSUCI departments to place orders directly with vendors and service providers, apart from using the delegation of authority that permits acquisitions to be made under the procurement card program or through the use of a petty cash fund. RGS's shall be submitted to Procurement for processing into a PO instead. 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 process. This procedure does not typically require a RGS 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 Accounts Payable 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.

- 2.49 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 RGS, 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 should first be approved by a department head/program chair and then routed to the division fiscal authority or designee.

PCC 1102, 10302; CSU Policy 209.

- 2.50 Financed Acquisitions: Most CSUCI 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 any interest charges add to the total cash outlay for the acquisition. Financing arrangements are not typically entered into unless the acquisition has a cost of at least \$50,000.

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/lessor 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.

- 2.51 Document Numbering Convention: Requesters may choose to submit RGS's to Procurement that are sequentially numbered. Once Procurement receives an RGS, it is translated into a formal transactional document such as a purchase order, service order, contract, or 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 the PO. The transaction is then no longer officially identified with the requester's original RGS number if any. A copy of the RGS should, however, be maintained as an attachment to the PO copy sent to the requester, for internal reference, as is done by Procurement. In listings such as the Open PO Report or other special reports, only the official document number assigned by Procurement will appear.
- 2.52 Purchasing & Contracting Data Reports: Reports on procurement activity data (including PO's, contracts, and other open orders) can be prepared and printed out for use by Finance or other departmental staff. Finance staff may create and examine special activity queries.
- 2.53 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 CSUCI or any CSUCI auxiliary organization information that is not a matter of public record for personal pecuniary gain. Prohibition of such use of information 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.

- 2.54 Personal Use of University Property or Facilities: No CSUCI employee shall derive personal benefit from the use of State property or facilities, unless a person having custodial responsibility for such property or facilities has authorized such use in writing. This authorization must include a statement that assures that such personal use is of benefit to CSUCI. *CSU Policy 210.01.*
- 2.55 Misrepresentation: The use of CSUCI procurement facilities or procedures to obtain property or services for personal use, or misrepresentation to vendors or contractors that personal acquisitions are for CSUCI when they are not can result in prosecution for misrepresentation, embezzlement, and theft.

PCC 10334; Penal Code 72; CSU Policy 210.03.

2.56 Conflict of Interest:

- A. 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.
- B. Consulting agreements must be in compliance with conflict of interest requirements as specified in Policy Section 412.10, Consulting Agreements.
- C. No CSU employee may make or participate in the making of any decision in which the employee has a personal financial interest.
- D. 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.
- E. 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 is disclosable in the CSU Conflict of Interest Code. In addition, such employees must disclose gifts totaling \$50 or more from any single source during any one reporting period for California Form 700, Statement of Economic Interest.

Ed Code 89006 and 89909; Government Code 1090, 87100, 87103, and 89503; Public Contracts Code 10830, 10831, 10832, and 10420.2. CCR 18700 et seq, 5CCR 4381; Contract Resource Library document CRL 056.

2.57 Endorsement of Products or Services: No person shall, without the permission of the Trustees, use the name "California State University," "California State University Channel Islands," "Cal State Channel Islands," "CSUCI" or any other abbreviation of it or any name of which these words are a part including all of its trademarks, for endorsements of any commercial product or service through the use of advertisements or promotions.

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

2.58 Splitting of PO'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.

- 2.59 Advance Payments: Payment in arrears is the prescribed method of remitting payments for State acquisitions. Documentation is required to be recorded by the accounting manager 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 it can be determined that there is no other way to obtain the service or commodity, where the advance payment is determined to be in the State's best interests, or wherever specifically authorized in law.

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

- 2.60 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, CSUCI 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 CSUCI Cashier 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.
- 2.61 Protests, Disputes, and Complaints: The staff member in Procurement who was assigned to the transaction shall initially address any protest, dispute, or complaint submitted in writing by a bidder, vendor, or contractor. 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 manager (or 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 manager, 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 for Finance and Administration, or designee, for further assessment. The written formal statement filed by the bidder, vendor, or contractor shall then be re-reviewed and the actions of CSUCI 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 CSUCI. 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 CSUCI 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 CSUCI authorities as to the action to be taken in response to the protest.

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

- 2.62 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 CSUCI (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 procurement manager, 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 bidder marks the information proprietary does not necessarily make the information proprietary and protected by the Public Records Act. If material marked as proprietary is requested for review, 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 manager 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 personnel.

Gov.Code 6251 et seq.

- 2.63 Contract Language: Quality contracts should have a balance of clear, simple, and concise language with an adequate use of legal terms that help protect the interests of all parties to the contract. Contractual language must always include the basic elements of a transaction. It must satisfactorily answer the following questions:

- a. Is the basic need or 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?
- i. Have CSUCI insurance requirements been included?

Other important considerations include:

- j. A focus on the expected end result of the transaction, as opposed to an elaboration on the means and methods by which the contractor is to achieve it;
- k. An accurate reflection—or preferably an attached copy--of the contractor's offer (the response to the solicitation);

- l. The uniform application of active rather than passive “voice”, whenever practicable;
- m. The use of good grammar, sentence structure, punctuation, and plain English;
- n. An avoidance of gender-specific language;
- o. An understanding of the differences—in contractual application--of the words “shall” (mandatory), “will” (predictive), “must” (obligatory), “may” (discretionary), and “should” (preferential);
- p. A statement of the total number of pages within the contract, along with an accurate & complete sequence of the actual pagination.

CSU CRL.

- 2.64 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 on Procurement’s Outlook shared public folder. 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.

- 2.65 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). Procurement 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 may be stored in facilities apart from Procurement.

Closed documents are filed separately by fiscal year and then alphabetically and arranged in sequential order by document number within the alpha sort.

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 Procurement 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.

- 2.66 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 Contract Services Officers. To ensure compliance with all applicable codes, regulations, and policies, CSUCI Procurement 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 89045I(d); CSU Policy 211.

- 2.67 Procurement Cost Savings: Procurement staff members are to strive to achieve cost savings for the requester and for the university 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 RGS, (2) negotiating for a lower price from a suggested provider, (3) using available master enabling agreements (MEA's), (4) establishing blanket orders for high volume acquisitions and (5) procurement staff communicating to the requester when a substitution is recommended. If the requester obtained more than one quote, please include all quotes with the RGS when submitting to procurement for a PO to assist procurement staff in further sourcing the item.
- 2.68 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 acquisitions, small business contract awards, disabled veteran business enterprise contract awards and Section 508 Compliance reporting. Procurement coordinates the timely completion of such reports.
- 2.69 Address Errors on Invoices: Vendors and service providers sometimes send invoices to Procurement instead of Accounts Payable. Procurement advises the vendor of the error and forwards the invoice to Accounts Payable.
- 2.70 Bid Openings, Job Walks, Pre-Bid Meetings: Procurement 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 RFP's, 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 CSUCI 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 Procurement. 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.

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, 10430I; Ed Code 89036; 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 Procurement determines that competition is necessary to develop sources, validate prices, or for other sound business reasons. Efforts shall be made to secure quotations and develop sources from small businesses and disabled veteran business enterprises whenever possible.

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 CSUCI's needs, or (b) if the commodity is to be purchased from a certified Small Business at a cost estimated to be less than \$50,000 where 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 online tool, BidSync, available through the Department of General Services (DGS) shall be utilized for advertising purposes and vendors expressing interest in furnishing the commodity shall be provided a copy of the bid solicitation document. Procurement and Contract Services also uses an online bidding tool, PlanetBids, for soliciting bids and proposals. 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, Procurement 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 any bidder who has submitted a bid files a protest contending that he or she is the lowest responsible bidder meeting specifications prior to the award being made, the award shall not be made until either the protest has been resolved or withdrawn.

Bids may be rejected whenever it is determined to be in the best interests of CSUCI.

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 bidder must agree in order to sell products to the State or the CSU. These are displayed as Contract Resource Library (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 PO or referenced the future CSUCI Procurement Internet webpage. 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 Procurement 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 to CSUCI through a CSU multi-campus agreement, typically deliverable within 24-hours. Departmental requesters are provided with computer-accessed and hard copy catalogs for ordering and a direct ordering link with the vendor established with a user name and password. The requester may order office supplies directly using the CSUCI procurement credit card program. However, notification should be provided to the receiving warehouse and delivery should still go to receiving. When supplies are requested that are not available from the current contracted vendor, an RGS may be transmitted to Procurement 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: RGS's for supplies and other items that are carried by State Stores (a Division of the State Department of General Services) should be routed via the appropriate order form to State Stores by those in Procurement who process RGS's, whenever such routing is justified by cost savings and the order cannot be filled under a Master Enabling Agreement (MEA) issued either by the CSU or by a particular campus.
- 3.07 Orders to Bookstore: When a RGS 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 CSUCI 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. PO's are routed to the Bookstore that clearly specify how delivery is to be made: If the items are to be delivered to 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." The CSUCI Bookstore also accepts procurement credit cards for payment.
- 3.08 Restricted Purchases: The purchase of certain products and substances in general is expressly prohibited by CSUCI. Authority to purchase certain other items is restricted to designated offices and/or individuals. Procurement 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, x-ray machines, firearms and other weapons, hazardous substances such as radioactive materials, solvents, toxic materials, ethyl alcohol, narcotics and dangerous drugs, precious metals, explosives and other classes of chemicals and select agents, pathogens or toxins as defined under the Patriot Act and the Public Health and Bioterrorism Preparedness and Response Act.

CSU Policy 205, Public Law 107.56 – Patriot Act

- 3.09 Direct Receipts of Commodities by Requesters: Requesters receive items directly from a vendor only when the requester or requester's department may pick up an item directly from a vendor whenever such action is appropriate, but pick up must be noted on the RGS submitted to Procurement as "FOB: Pick-up by campus" and pick up should of course not occur until the vendor has received a PO from Procurement. 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. If the requester or requester's department receives the item directly, receiving must be immediately notified of the receipt referencing PO# or that the purchase was made via the procurement card. 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 RGS's Merged as a Single PO: Two or more RGS's from a given campus department shall, when required or when deemed practicable, be merged into a single purchase order. This procedure is intended to cut administrative processing expenses. Multiple RGS's 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 RGS's. The resulting PO should clearly identify which requesting department ordered which items.
- 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 CSUCI use necessitates additional registration and certification procedures, typically initiated by the CSUCI lead mechanic. Registration and certification procedures are specified within the contents of the California Vehicle Code sections 4000-6100. CSUCI has the option 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 competitiveness of price. This may be via solicitation of bids, or by the use of reciprocal cooperative contracts executed by other governmental or public entities.

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 and trained by the Director of Environment, Safety and Risk to do so. The Hazardous Substances Information and Training Act in the California Labor Code specifies that purchase orders for chemicals or other products that may contain any kind of hazardous material include a vendor requirement to furnish a Material Safety Data Sheet (MSDS) 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 CSUCI University Library services may be purchased without advertising for or soliciting bids. Such materials and resources include books, periodicals, and 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 university. CSUCI Procurement shall issue purchase documents, including PO's, contracts or agreements on behalf of the University Library as CSUCI has not delegated purchasing authority to the University Library at this time. All electronic and information technology (E&IT) purchases made by or for the library are subject to Section 508 compliance if the purchase impacts a large number of students and faculty on campus and/or if the purchase exceeds the yearly dollar threshold for E&IT procurements as established by the CSU.

CSU Policy 303.04.

- 3.14 Prohibition on Commodities Produced by Slave Labor: Every contract for the procurement of State or university 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 university 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 Code 6108; CSU Policy 303.05.

- 3.15 Recycled Products: Procurement is required to establish purchasing practices that ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded. Purchases of materials, goods, and supplies that are recycled or have recycled material within their content shall be given preference whenever fitness and quality are equal and the cost of such products is no greater than that of their non-recycled counterparts. Procurement staff is required to ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded, whenever it is feasible to do so.

Vendors and contractors are required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer and secondary content of the materials, goods, (or supplies) provided or used. This certification shall be furnished under penalty of perjury, per PCC 12205.

The State of California has set legislative goals and guidelines for the procurement of recycled products by State agencies and the CSU. Accordingly, Procurement must report recycled product acquisitions for the campus in twelve (12) categories: (1) writing paper products which include, but are not limited to, fine papers, such as xerographic and envelope papers and form bond; (2) other paper products, including corrugated boxes, newsprint, tissue, and toweling, (3) compost and co-compost products; (4) glass; (5) oil; (6) plastic; (7) solvents; (8) paint, including water-based paint; (9) tires; (10) tire-derived products; (11) steel and (12) anti-freeze. Annual data for these categories must be submitted by September 1 to the California Integrated Waste Management Board (CIWMB) for inclusion in the State Agency Buy Recycled Campaign (SABRC) report.

A projected one-fiscal-year SABRC Procurement Plan shall also be submitted directly to the CIWMB by each State agency and CSU by September 1, annually. A copy of each Plan must be transmitted to Chancellor's Office Contract Services and Procurement by August 15 of each year.

Procurement maintains a library of recycled-content products and suppliers and shall inform end-users when a comparable recycled-content product is available. End-users should inquire about recycled-content alternatives to these products when investigating available sources.

PCC 10860, 12150-12226; CSU Policy 303.01.

- 3.16 Purchases of Paper Stock: For the acquisition of recycled paper products, CSUCI 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.

CSUCI 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, CSUCI 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 303.01.

- 3.17 Two and Three-Way Matching of P.O. Copies: The matching of purchase order and invoice copies is a step in the process of ordering, receiving and subsequently 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 Procurement, 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 a second copy of the purchase order from Receiving showing that the item has been received.

An authorized order 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 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 and 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 Receiving or has been picked up by (or delivered directly to) the requester. It is important that the RGS 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 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. A separate P.O. line item may be established on the P.O. and encumbered to pay for the freight. As a State agency, CSUCI may take advantage of any State agreements established for the purpose of cutting costs via reduced shipping rates.

Outgoing shipments from the campus are rare, but there are times when they must be made. Logistical Services is responsible for the movement of material on and off the campus and receives and ships all packages that go through common carriers. While Shipping and Receiving 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 request so that adequate holding space can be arranged 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 by Procurement 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 OPC is requested to move the item(s) to Receiving, a work order request should be submitted to the OPC WorkCenter 5-7 working days in advance of the date that the move is to be performed. The shipment should be in its original packaging as Shipping and Receiving does not stock boxes. If the original packaging is not available, additional time may be required to order new packaging for an out bound shipment. 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 2 also apply to the procurement of contractual services and service orders.

This Section shall apply to the following kinds of contracts:

- a. Service Agreements;
- b. Independent contractor and consulting services;
- c. Service Orders.

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

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

Ed Code 89036, 89038, 89048(d), 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 Procurement 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. *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 university, 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 on BidSync (formerly the California State Contracts Register) and may also be advertised in local newspapers, specialty trade publications or other focus media.

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;
- 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, except when 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 are posted on the Procurement website at <http://www.csuci.edu/procurement>. Complete copies of the bid or proposal solicitation document must be maintained in Procurement and made available to any interested bidder upon request. In addition, bid solicitations and requests for proposals are posted on the website used by Department of General Services for bid notices. (Reference section 4.17 below.) The solicitation process may also include an announcement in an appropriate newspaper, trade journal or focus media. Such notices include 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 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 legal problems. 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”) to which a contractor must agree in order to provide services to 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 Service Orders: Service Orders 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 CSUCI 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 CSUCI or by the contractor, must first be determined to comply with all applicable laws, regulations, and policies prior to the contract being executed and may need to be reviewed by CSU Office of General Counsel.

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

- a. Use the correct standard form.
- b. Use simple, clear and concise language.
- c. Use consistent 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 one particular document).
- d. Active voice is preferable to passive voice, and one should try not to mix the two together in the same contract.
- e. Mark exhibits, attachments, addenda, and other parts of a contract clearly, arrange them sequentially, and reference them accurately throughout the text.
- f. State payment terms clearly.
- g. At least one other person should proofread or edit the contract carefully after it has been drafted.

CSU Policy 410, 411.

- 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 appropriate procurement authority has approved the contract. 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 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 CSUCI 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.

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. CSUCI 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 CSUCI has previously 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 Memoranda of Understanding (MOU's): 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/>. CSUCI policy requires that authority not lower than the President is required to enter into MOU's with other entities.

CSU Policy 702.

- 4.15 Contracts with Auxiliary Organizations: CSUCI 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, however, "these contracts may not be used to circumvent the competitive bidding requirements of this same article" 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 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.

PCC 10340(b)(3)

- 4.16 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 university). 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.

- 4.17 BidSync (formerly the California State Contracts Register [CSCR]): BidSync 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. The Office of Small Business Certification & Resources (OSBCR) promotes it. Fees are exacted for the advertising services. The Internet website that provides access is www.bidsync.com. It is the system-wide policy of the CSU to advertise for bids on Bidsync. The CSUCI policy, specifically, is to advertise on Bidsync any bids for services with a dollar value of \$50,000 or more, and purchases of goods or materials with a dollar value of \$50,000 or more, whenever possible. All public works bid solicitations with an estimated dollar value of \$400,000 or more shall be advertised on Bidsync. The campus requester (or the requester's department) normally is expected to pay the advertising fee to use Bidsync. There are specific instances where advertising on Bidsync may be exempted:
- a. Moving companies to relocate recruited and active employees.
 - b. Emergency contracts necessary for the immediate preservation of life or State property (requires a written justification to be recorded);
 - c. Contracts for the work or services of a State (via an Interagency Agreement), local, or federal agency;
 - d. Services for which the State has entered into a California Multiple Award Schedule or a master services agreement;
 - e. 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;
 - f. Contracts for medical care services with physicians, local community hospitals, and medical groups (this does not include offsite laboratory services);
 - g. Subvention contracts (non-discretionary grants) with a private or nonprofit entity for the purpose of providing services to the public or segments thereof;
 - h. 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;
 - i. Proprietary software contracts;
 - j. Leases or rentals for use as examination sites;
 - k. Entertainment contracts for State-sponsored fairs and expositions;
 - l. Contracts for which only per diem and travel expenses are paid and there is no payment for service rendered;
 - m. Contracts solely for the purpose of obtaining expert witnesses for litigation;
 - n. Contracts for legal defense, legal advice, or legal service;
 - o. Contracts with business entities operating handicapped workshops that meet the criteria established by Section 19404 of the State Welfare and Institutions Code;
 - p. Contracts for architectural or engineering services;
 - q. Contracts for Guest Lecturers & Performers;
 - r. MOU's with other CSU;
 - s. Contracts with CSU auxiliary organizations.

All other contracts for services with a cost of \$50,000 or more, and public works estimated to cost \$5,000 or more must be advertised unless a “Request for Exemption from BidSync Advertising” has been approved. The procurement manager, or designee, must approve the completed exemption request. The criteria for the waiver of a BidSync advertisement include such factors as the complexity of the service, the unique experience required, whether the procurement has been approved as a sole source, whether the required timeframe for delivery of the service precludes the possibility of advertising, and whether the best interests of the campus would be served by not advertising. All approved waivers shall be filed with the contract.

Gov. Code 14825; CSU Policy 403.

- 4.18 Copier Services: Copier services are provided to the campus via the Pharos Chargeback program. Campus departments are not permitted to purchase or lease any copier, multifunction printer or any other piece of office equipment that has copying capability. All department requests for copiers are made to the requesting campus division Copier Committee representative. The representative will forward the request to the campus Copier Committee for consideration. The committee will either approve or disapprove the request. If the request is approved, the committee will forward their approved copier specifications to Procurement who will order the equipment and coordinate the installation with the IT department. All copiers shall comply with accessibility standards in accordance with Section 508 requirements.

CSU Policy 705.

- 4.19 Monthly Billing Cut-Offs: About one week prior to the end of each month, the CSUCI 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 departments and programs, including Procurement & Contract Services and any charge-back operations. Transactions submitted after a designated cut-off date must be charged to the subsequent month.
- 4.20 Moving Expenses: Since CSU Human Resources, Academic Affairs and/or CSUCI Accounting maintain operating policies and procedures governing moving expenses, Procurement involvement is minimal and normally involves the placement of a standard agreement or service order with the household goods moving company that is specified on a RGS. Negotiated system wide Master Enabling Agreements (MEA's) for personnel relocation are available and are encouraged to be used. Orders for moving expenses and relocation allowances are not subject to sole source justification.
- 4.21 Funding of Acquisitions: All RGS's intended to result in a procurement award must contain complete funding information. Procurement performs a general review of funding data in order to verify the accuracy of the information on paper RGS's and CMS will also alert procurement staff to certain funding combination errors and the PO cannot be created. If a funding problem is identified on the RGS, the requester is notified to correct or submit a revised RGS.
- 4.22 Independent Contractors: Service contracts between CSUCI and individual contractors are useful for obtaining certain skills and working experience that may not be available from the 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 agency/ independent contractor relationship 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 source. Procurement finds out from Human Resources Programs whether or not the proposed contractor is an employee of CSUCI. A contract shall not be awarded until this determination is documented.

An advisory must be submitted to Human Resources Programs (HRP) 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) be issued to any collective bargaining organization that might be affected by such a contract. The terms and conditions of MOU's with collective bargaining organizations vary from one group of employees to the next, so it is generally considered prudent to notify HRP well in advance of the development of a personal services or consultancy contract, regardless of the perceived length of term for the appointment.

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 prepared on the CSU Standard Agreement Form.
- b. Appropriate consultant determination guidelines should be used and recorded.
- c. Consultant contracts should not be issued to CSUCI employees. The proposed consultant's social security number should not appear on CSUCI'S list of active employees.
- d. A CSUCI project manager shall be identified for each consulting contract. The project manager serves as the university'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. CSUCI 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 CSUCI contracts with an independent contractor serving as a consultant are:

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.

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; CSU Policy 412.09, 412.10.

- 4.23 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.

- 4.24 Risk Management & Liability Insurance Requirements: As approved by the University President, CSUCI 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 university. While all administrative personnel and faculty are responsible for implementing, supporting, and enforcing CSUCI risk policies, certain campus offices are charged with providing advice, information, and activity coordination related to the subjects of risk management and liability insurance.

Environment, Safety & Risk is responsible for the implementation and evaluation of campus-wide liability and risk management policies. It ensures that the campus is compliant with all Federal and State regulations that relate to risk issues. It also reports safety and risk issues or changes to the Vice President for Finance and Administration or designee, for discussion, resolution, or dissemination.

Human Resources Programs periodically reviews campus risk management policies to identify existing or potential issues.

Procurement is responsible for minimizing contractual liabilities to the university and ensuring that the insurance requirements of the university are met.

Evidence of general liability insurance or bond coverage is required for contracts involving any activities that put the State, the CSU, or CSUCI, at risk. Such agreements include those for custodial services, landscaping, refuse collection, elevator maintenance, shuttle bus services, pest control and fumigation, excavation or demolition work, the use or rental of cranes, and any other contracts where independent contractors are performing the services on campus.

Any contract that may involve risk of injury or damage to persons or property shall protect the State and the CSU against liability by requiring the contractor to carry general liability insurance in an amount no less than \$1,000,000 per person, and no less than \$2,000,000 aggregate per occurrence. These limits of coverage are minimum amounts, and in any situation where a higher risk of liability is present, CSUCI, in accordance with guidelines established by the Chancellor's Office, may require the Contractor to carry insurance with higher limits.

Contracts requiring insurance coverage shall, at minimum, contain the following provisions:

Contractor shall furnish to CSUCI, prior to approval by the university and commencement of work, an underwriter's endorsement with a certificate of insurance stating that there is liability insurance presently in effect for the Contractor with a combined single limit of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate; and that commercial vehicle insurance (where applicable) is in effect with a minimum coverage of \$1,000,000 per occurrence.

The certificate of insurance shall provide:

- a. That the insurer will not cancel the policy holder's coverage without thirty days prior notice to the university;
- b. That the State of California, the Trustees of the California State University, California State University Channel Islands, their agents, officers, employees, representatives and volunteers are included as additional insured, but only insofar as the operations under this contract are concerned;
- c. That the State, the Trustees, the CSU, and the employees, officers, and agents of each of them shall not be responsible for any premiums or assessments on the policy.

Contractor agrees that the bodily injury liability insurance herein provided shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide, at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of CSUCI, and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, CSUCI may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

In most instances, certificates of insurance should also include (a) Worker's Compensation, (b) a Hold Harmless provision such as "Contractor shall hold harmless, indemnify, and defend the State of California, the Trustees of the California State University, CSUCI, and the officers, employees, volunteers and agents of each of them from and against any liability, loss, damage, or cause of action arising out of or in connection with this contract."

In the event a contracting entity is self-insured, the following statement signed by an authorized corporate officer 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 CSUCI: "As an alternative to providing the general liability insurance required under this contract, 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 CSU Board of Trustees and their officers, agents, and employees."

It is recognized that a purchase order for the routine procurement of commodities may not explicitly state insurance requirements. However, Procurement shall attempt to identify any potential risk associated with an acquisition request that may require the imposition of insurance requirements.

For the procurement of hazardous materials and service contracts for the removal of hazardous materials, Risk Management should perform risk identification and evaluation, and special coverages required of the contractor, as appropriate. In the absence of an evaluation, general liability coverage is required in the minimum amount of \$5,000,000 combined single limit bodily 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 a \$500,000 fire legal liability. A Waiver of Subrogation must be in evidence. Environmental Impairment (pollution) Liability coverage is required 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 cost. The required commercial vehicle coverage should also include Uninsured/Underinsured Motorists coverage in the minimum amount of \$1,000,000. Evidence of Pollution and/or Asbestos Pollution Liability must be presented prior to this kind of service being provided on campus.

Short-term licenses issued by CSUCI or one of its auxiliaries for special on-campus events shall require evidence of appropriate kinds and levels of general liability coverage. These may include, but are not limited to, athletic events, automobile or motorcycle races, rodeos, thrill shows, and firework displays.

No project work or event activity may commence until the required insurance documents are on file, and it is critical that insurance be in effect for the entire contract term. If the insurance coverage expires during the contract term, new certificates must be obtained prior to the contract expiration date. Procurement shall coordinate with OPC, Housing, and/or other campus departments regarding projects that extend beyond the initial insurance period.

CSU Policy 230 et seq.; Executive Order 743.

- 4.25 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 Risk Management. The system-wide model can be found on the CSU website address. <http://www.calstate.edu/csp/>.

CSU Policy 412.07.

- 4.26 RGS's for Guest Artists and Lecturers: A RGS for a guest artist performance or lecturer's appearance is processed 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 Procurement prior to returning it with the service order. Also, the guest or guest's agent must complete a State Vendor Record 204 form at this time. After execution of the "contract", a copy of it shall be retained in Procurement'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 RGS's and/or contracts need not be prepared.

- 4.27 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 all three parties involved (the assignor, the assignee, and CSUCI) have accepted the Assignment in writing, 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 Procurement.

- 4.28 Contract Award Report (State Form 16): All State agencies including 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.

- 4.29 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 the 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.

- 4.30 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.

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).

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 Policy sec. 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 via the procurement card program as appropriate 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.

CSU Policy 504.

5.02 General Provisions: All standard purchase and service contract policy requirements contained in other sections of this manual, 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, BidSync advertising, vendor data record forms, and applicable general provisions governing all transactions.

CSU Policy 502.

- 5.03 Procurement Principles for IT Transactions: CSUCI shall employ sound and appropriate business practices to guide and control the planning, acquisition, development, operation, maintenance, and evaluation of all IT-related applications.

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, CSUCI 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, CSUCI is given a choice of vendors to meet its individual or unique hardware, service, and application requirements.

The CSU strives to continue transforming its procurement activities from a labor and paper intensive process to an all-electronic system whereby databases 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 503.

- 5.04 Competitive Bidding: It is the policy of CSUCI that all transactions made under the CSU procurement authority are designed to encourage active competition among those who wish to become the suppliers of goods and services to the campuses.

There is no single competitive procurement methodology universally suited to all kinds of IT acquisitions. CSUCI 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 may be effective for IT acquisitions as well. There are, however, other approaches such as the Best Value or Multi-Step techniques that could be ideally suited for a particular IT acquisition. It is the responsibility of Procurement to recommend the method best suited to a particular acquisition, with special attention being given to the “Best Value” approach.

An acquisition estimated to cost less than \$5,000 might be awarded to a certified Small Business, without competition. However, when there is reason to believe that the price quote from a Small Business is not a fair and reasonable one, the campus shall obtain at least two other price quotes.

An acquisition estimated to cost at least \$5,000 (but less than \$100,000) might be awarded to a certified Small Business with the proviso that at least two other price quotes have been obtained from other certified Small Businesses.

For formal solicitations, public notice of the intent to acquire IT goods and services in the open market shall be posted in a location easily accessible to any bidder who may wish to compete for a purchase order or contract award. Such postings may include campus website addresses. Advertising on BidSync is also required. Complete copies of the bid or proposal solicitation document must also be maintained in Procurement and be 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 for bids or proposals to be received, and the location where complete copies of the solicitation document may be obtained.

To promote fair and open competition, each formal solicitation for IT goods and services must be designed 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:

- a. In cases of emergency where a contract is necessary for the immediate preservation of public health, welfare, or safety, or the protection of State property;
- b. When the campus has advertised the contract in the CSCR and has solicited all known potential contractors;
- c. The contract is with another State agency, a local governmental entity or an auxiliary organization of the CSU (such contracts, however, may not be used to circumvent competitive bidding requirements);
- d. The contract is being awarded on the basis of sole source criteria.

Bulletin 02-19 Revision 4 issued October 23, 2003 to provide guidelines on the acquisition of goods and services obtained through the use of California Multiple Award Schedule (CMAS), State Master Agreements, and non-competitively bid acquisition methods in compliance with the policy expressed in the Governor's Executive Order D-55-02. Until rescinded, this Bulletin shall control if in conflict with other portions of the CSU Policy Manual for Contracting and Procurement and/or this CSUCI Procurement Operations Manual. <http://www.calstate.edu/CSP/Bulletins/02-19rev4.pdf>

- I. Except as otherwise provided, all IT goods and services acquisitions, based on CMAS and State Master Agreements, shall be competitively bid resulting in offers from three vendors including one small business, if available. If less than three offers are received, documentation of solicitation methods must be included with the contract documentation. In addition, acquisitions of over \$500,000 must include documentation of solicitation methods and efforts to obtain competitive bids and must be approved by a campus authority no lower than Vice President for Finance and Administration.

Less formal procurement procedures may be applied to any IT acquisition estimated to cost less than \$250,000. Simplified procedures can be used in the bid solicitation, advertising, evaluation & award, and contract execution phases. Acquisitions estimated at \$250,000 or more must utilize the formal methods described in the preceding paragraph and in Sections 2, 3, and 4.

PCC 12102, 12120, CSU Policy 505, CSU Bulletin 02-19 rev. 4.

- 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 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 quotation 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.
- p. Accessible Technology Initiative Section 508 compliance

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 CSUCI 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: Procurement may avail itself of any existing CSU model agreements for IT acquisitions. The terms and conditions expressed in a model agreement that is used repetitively with the issuance of IT-related contract awards may be pre-negotiated with the university, 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.

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 RGS's of \$250,000 or more that are not intended to be processed under a CSU system-wide agreement must also be approved by the Vice President for Finance and Administration, or designee.

CSU Policy 500, 501.

- 5.11 Used Equipment: CSUCI may take advantage 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. Property Management is maintained by the CSUCI Accounting and Financial Reporting office.

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.

Section 6

Requirements for Developing a Public Works Project

Content: The following information is intended to summarize in a sequential manner the steps that should 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, CSUCI personnel involved with the development of a project and contract award are invited to consult with Procurement or OPC staff whenever the need for added detail arises. The Cal Poly Pomona “Public Works Project Processing Model” is also available from Procurement for campus use, upon request.

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 university presidents via Chancellor’s Office Executive Order 672.

References cited: *Italicized* references are used at the ends of Section 6 paragraphs as throughout the rest of this manual. Among others, they include: *PCC* (CA Public Contract Code); *Civil Code* (CA); *Labor Code* (CA); SUAM (State University Administrative Manual—public works) <http://www.calstate.edu/tier3/suam>; and *CPPppm* (Cal Poly Pomona Public Works Project Processing Model) that is available in electronic form from Procurement. This booklet is also available at the following website: <http://www.csupomona.edu/~procurement/contract/pw.html>

General Responsibilities: The working titles used herein may vary from one campus to the next. The two campus administrators who typically share many of the functional responsibilities for a public works project are termed the “Construction Administrator” (CA) and the “Contracts Specialist” (CS). It is 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 (CA): This person is selected by the university 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 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 Contract Specialist, work together to 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 CA.

- b. Contract Specialist (CS): 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 may be assigned to the campus procurement officer or to a staff member within Procurement. The CS works with the CA or a project manager to develop (1) information and data needed for 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 CS interacts and coordinates contract-related activities with other campus offices such as accounting, budget, and risk management. The CS also routinely interacts with both Contract Services and Procurement (CS&P) and Capital Planning, Design and Construction (CPDC) of the Chancellor's Office.

PCC 10700 et seq., 10800 et seq.; CPPppm (vii).

- 6.01 Establishing a Need for the Project: a project applicant or a user group conceives the idea for a project. The concept is proposed & developed, reduced to writing and sketches, and evaluated for feasibility. If the concept appears feasible, it is transmitted to the OPC department for further evaluation and permits.

PCC 1101, 10701(a); SUAM 9011, 9013; CPPppm I(1).

- 6.02 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 and/or project description is submitted to the Campus Planning Committee for review and discussion.

SUAM 9011, 9028; CPPppm I(2)

- 6.03 Formal Conceptual Study: After the feasibility study and project description are performed and reviewed by the Campus Planning Committee, a detailed conceptual project scope and budget are developed, funding options are evaluated with potential funding sources identified in writing, 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 architect or a contracted architect. Project documents should then be submitted to the Campus Planning Committee for discussion as the project evolves. Again, these project documents must always be considered with respect to the campus Master Plan. Then, the committee makes a recommendation to the President in the form of a resolution. The President may approve or not approve a project. If approved, an updated cost estimate then becomes part of the campus' projected budget. Major Capital Outlay (Major Cap) {greater than \$400,000} budget proposal documents, including Preliminary Plans, must be submitted for further review and approvals to Capital Planning, Design and Construction (CPDC) at the Chancellor's Office.

SUAM 9007-9014, 9131; CPPppm I(3).

- 6.04 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 Capital Outlay (Minor Cap) {less than \$400,000} projects are approved

either by the campus or by CPDC, 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 (LAO) 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 (or the CA) 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; CPPppm I(4).

- 6.05 Project Budget: The campus' projected budget for the approved project(s) 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; CPPppm I(5).

- 6.06 Project File: All planned project budget expenditures are entered into a Capital Project File system. All figures are reconciled to the amounts established within the Project account(s). The project file should include project milestones.

SUAM 9792, 9800 et seq.; CPPppm I(6).

- 6.07 Professional Services Solicitation: OPC may elect to offer the appointment for engineering, architectural, or landscape services to the Campus Consulting Engineer, Campus Consulting Architect or Campus Landscape Architect. In this event, negotiations for the services may be undertaken. If the offer is declined, then the CS and the CA may solicit other proposals and should use the RFP process if the value of the proposed contract is to be greater than \$5,000. Under either scenario, however, a project RGS and attached proposal(s), if available, containing detailed information is submitted to the CS for each 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. The RGS should contain a brief description of the service needed, project number or other identifier as needed, cost estimates, account(s) to be charged, and beginning & ending dates for the service. Other information placed on the RGS can be useful, such as suggestions for desired advertising media (if known), pre-qualification requirements (if any), pre-bid conference or job walks requirements. A project RGS should present a clear preview of the terms & conditions in the contract—the five Ws: who, what, when, where and why.

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

If an RFP needs to be developed, the project RGS serves as the source of basic information. The CS develops the RFP. The RFP shall include a project description, a construction cost estimate, scope of services required, insurance and bonding requirements and a copy of the

agreement form to be used. The CA assists the CS 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 CS places the advertisement in the appropriate media. Once the RFP is complete, the CS distributes copies both to advertisement respondents and to any other professional service providers in the CMS vendor database or directly solicited.

PCC 10701(c), 10707; Gov. Code 4525, 4526; SUAM 9004, 9200 et seq., 9700.03; CPPppm I(7).

- 6.08 Selection of a Professional Services Provider: Proposals from potential professional service providers are received by the CS, an RFP review committee is formed and the proposals are submitted to the CA/CS and RFP evaluation committee for review. The RFP evaluation committee ranks the respondents according to already established criteria presented in the RFP documents. A short-list of potential providers may be considered for interview. After interviews are conducted, the candidates may be 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, the CS must notify CPDC of the selection.

PCC 6106; SUAM 9207 et seq.; CPPppm I(8).

- 6.09 Award of a Professional Services Agreement: CA requests the CS to prepare a formal agreement to the selected professional service provider, using information collected from the selection process, the project RGS, completed forms required under CSU policy, and any other agreed-upon matters. Two counterparts of the agreement are prepared and signed by both parties. These two 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, scans the document before returning both counterparts back to the CS as a legal and binding document. The two counterparts are distributed, one original to the service provider and an original is retained in Procurement files, and a copy is made for OPC and/or the CA.

PCC 10707, 10820; SUAM 9208-9210.; CPPppm I(9).

- 6.10 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 OPC requests that an “Extra Services Authorization Letter” be prepared. The CS prepares the letter, secures an approval with authorized signature, and forwards a copy of the signed letter to the service provider.

SUAM 9210.02; CPPppm I(10).

- 6.11 Emergency Contracts: When the campus determines that an emergency exists due to force majeure, earthquake, flood, storm, fire, landslide, **acts of terror**, 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 solicitation of formal bids. More than one

informal price quote may be solicited when practical. 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.

- 6.12 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, must be advertised. An interested contractor must be financially pre-qualified before submitting a proposal. An RFP committee evaluates proposals and the determination of a contract award is made on the basis of “best value.”

PCC 10708; SUAM 9701.07; CPPppm I(11)

- 6.13 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. Office of General Counsel approval is required for all JOC awards.

PCC 10710, 10724; SUAM 9701.03.

- 6.14 Schematic Design Phase and Job Start Meeting: Following the Project approval by CPDC, receipt of funding, and General Counsel’s endorsement of the architect/engineer (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.; CPPppm I(12)

- 6.15 Preliminary Design Phase: After campus approval of the Schematic Design, the A/E is directed by the CA 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 required regulatory 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.; CPPppm I(13)

- 6.16 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 CA 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 and 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 by the CS prior to having it printed.

PCC 7106, 10720, 10765; Bus. & Prof. Code 16600 et seq.; SUAM 9235 et seq.; CPPppm I(14).

- 6.17 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; CPPppm I(15)

- 6.18 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 and answer deadline, bid opening date, etc.).

PCC 10826; Labor Code 1720, 1771, 1771.5; SUAM 9721; CPPppm I(16).

- 6.19 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 Major Cap 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. The campus CA sends a “Request for Approval to Proceed to Bid” letter 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 CA is officially notified and the project Architect, the CA, the CS and/or other members of the project team jointly undertake a final review of the Bid Proposal Package.

Gov. Code 13332.11; PCC 10780.5; SUAM 9721 et seq.; CPPppm I(17).

- 6.20 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 team to correct errors, misprints, and omissions.

SUAM 9731 et seq., 9746; CPPppm I(18).

- 6.21 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 CA 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 projects, or other projects not funded by Major Cap funds, require campus approvals only. For all projects, the CA and CS jointly prepare an advertisement for the solicitation of bids. The CS submits the ad for placement into appropriate newspapers and other 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 to submit bids.

A number shall be assigned to each Bid Proposal Package printed, and the number recorded in a log 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.; CPPppm II(1,3).

- 6.22 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. 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 plan holders who have expressed interest. The campus representative, at the event, must utilize an attendance log. 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 CA and the CS (or their designated representatives) shall attend the Pre-bid Conference or Job Walk.

PCC 6610; SUAM 9723; CPPppm II(4,6,).

- 6.23 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; CPPppm II(5)

- 6.24 Pre-qualifying the Bidders: A financial pre-qualification of bidders is required for Major Cap projects estimated to cost \$400,000 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 are not pre-qualified, the pre-qualifying forms and documents are requested from CPDC, completed, and submitted back to CPDC for approval. The CS coordinates this with CPDC during the pre-bid period and, once approved, a potential bidder may request a Bid Proposal Package after producing evidence of pre-qualification. CSUCI or CPDC may additionally elect to pre-qualify bidders on the basis of their skills and experience.

PCC 10760, 10763; SUAM 9740-9745; CPPppm II(2).

- 6.25 Bid Opening: The Notice To Contractors must state when and where sealed bids are to be opened. The CS (or a CS representative) must receive all bid proposals 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; CPPppm II(7).

- 6.26 Determination of the Lowest Responsible Bidder: The CS evaluates the bid documentation submitted 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 the entire bid requirements become eligible for further consideration in receiving the contract award. The apparent low bidder is determined by the CS 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 CS must verify authenticity of the license with the Contractors' State License Board.

The CS examines the bid bond (bid security) of the lowest responsible bidder to ensure that an agent officially registered with the State of California has issued it.

The CS 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 CS 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; CPPppm II(8).

- 6.27 Disabled Veteran Business Enterprise (DVBE) Requirements: The CS 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 CA is informed of the results and the CS begins assembling the contract.

PCC 10115 et seq.; SUAM 9720.02, 9763, 9774; CPPppm II(9).

- 6.28 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 CA. Then the CA must 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 CA 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 on that project. Once the proposed substitution is accepted, the proposed contractor is notified, the CS is advised of any changes needed to the proposed contract, and the award procedure continues.

PCC 3400; SUAM 9721.01, 9721.02; CPPppm II(10).

- 6.29 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 CS for release. It should be posted in or near Procurement in an area that is available to the general public for viewing. Optionally (or additionally) it may be transmitted to all bidders. Usually three business days should be allowed to permit receipt of any bid award protests.

SUAM 9780-9780.02; CPPppm II(12).

- 6.30 Bid Award Protests: The CS 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. The CS may elect to resolve a bid award protest personally, or by delegating the responsibility to a single individual. 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 CS (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 CS 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 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 all bids may be rejected. The decision of the campus is final.

SUAM 9775; CPPppm II(13).

- 6.31 Award of Contract: After protests (if any) have been resolved, and approval to award a contract has been received from CPDC (Major Cap) or the Vice President for Finance and Administration (Minor Cap), the lowest responsible bidder is advised in writing that a contract is now officially forthcoming.

PCC 10725, 10781-10783; SUAM 9780-9780.02; CPPppm II(14)

- 6.32 Bid Document Files: The CA and the CS 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 Procurement while the original Bid Document file is transmitted to CPDC for review. The file may include, but not be limited to a bid summary tabulation and other pertinent bid documents.

SUAM 9780.03; CPPppm II(11).

- 6.33 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; CPPppm II(15).

- 6.34 Contract Development & Assembly: The contract is developed and assembled by the CS. Its components typically include the Agreement Form (the face page of the contract) signature page, Notice To Contractors, the signed Bid Proposal, the plans and 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 all do not 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. Two fully developed counterparts of the contract are then prepared for signatures.

PCC 10826; SUAM 9780.03; CPPppm II(15, 16).

- 6.35 State Form 13—Extract of Public Works Contract Award: State Form 13 must be filled out and submitted by the CS 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; CPPppm II(23).

- 6.36 Contract Execution: After two fully developed unsigned counterparts of the contract have been assembled, the CS transmits these to the proposed contractor to complete and sign. When completed documents are returned, the CS examines them to assure that all documents have been properly processed and that no changes or alterations have been made. If none, the CS 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; CPPppm II(16).

- 6.37 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 CS 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; CPPppm II(17).

- 6.38 Contract Checklist (optional): The CS may complete a Contract Checklist 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; CPPppm II(18).

- 6.39 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 CS 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 CS to hold until all have been satisfied. Once the contract has met all requirements, the Office of General Counsel signs the counterparts, thus making the contract legal and binding upon both parties. Two counterparts are then returned to the CS for distribution to the appropriate parties.

PCC 10820; SUAM 9780.03; CPPppm II(19).

- 6.40 Distribution of the Executed Contract: Upon receiving the signed counterparts of the contract back from the Office of General Counsel, the CS retains one counterpart for the file, and distributes the other original to the contractor, and copies if needed.

SUAM 9780.03; CPPppm II(20).

- 6.41 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; CPPppm II(24).

- 6.42 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, 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; CPPppm II(21).

- 6.43 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 CA verifies with the campus accounting manager 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; CPPppm II(25).

- 6.44 Escrow Accounts: By requesting that the campus establish an escrow account 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 CS is responsible for getting the escrow account established and is also responsible for closing it at the project's completion.

PCC 6106.5, 10852; SUAM 9804; CPPppm II(26).

- 6.45 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 and/or CA, CS, other OPC staff representatives, and anyone else necessary to the project. All issues regarding the roles and responsibilities of

Project team members, the paperwork process, submittals, change orders, Payment Requests, 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 CS develops pre-construction packages and agenda for distribution at this meeting. The CS prepares contract labels for two sets of the official contract documents for joint signature by the contractor. 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 CA 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. The CA shall endorse it within three weeks after the Notice To Proceed is issued.

SUAM 9791; CPPppm III(1).

- 6.46 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 CA 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 CA 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; CPPppm III(2).

- 6.47 Notice To Proceed: After the Contract has been fully executed; the CS issues the Notice To Proceed. 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 CA 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; CPPppm III(3).

- 6.48 Project File and Reporting Activities: The CS must examine the project file 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 file. Periodic progress schedule report updates, as required from the Contractor, are used to further update 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 project appropriations.

SUAM 9792, 9800-9801; CPPppm III(4).

- 6.49 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 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 CS for safekeeping in the project file.

SUAM 9800.06, 9832.01; CPPppm III(5)

- 6.50 Stop Notices and 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 are 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 CS is responsible for receiving and keeping a file copy of all Preliminary Notices and Stop Notices. The CS also coordinates with the CA 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; CPPppm III(6).

- 6.51 Progress Payments: 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 request to be discussed with the CA prior to approval. Once the payment request is approved (with or without changes) the Contractor submits a formal Request For Payment to the CA. The CA 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 CA 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 CA makes proper distribution of all remaining copies of the payment request and updates the project file.

PCC 9203; 10851; SUAM 9803; CPPppm III(7).

- 6.52 Change Orders (and Field Instructions): To ensure continuing campus control over the project activities, only the CA may initiate changes in the work during construction. The campus, the Project Architect, or the Contractor may request such changes. 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 (CCP) is first prepared. The CA 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 CA approves the CCP, 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 asks for detailed cost figures from the Contractor. Informational copies of the CRB are also distributed to the CA, the Project Manager, and 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 possibly an independent estimator. If the cost proposal is found to be reasonable, it is forwarded to the CA for examination. Once the CA deems the cost proposal acceptable, the CS is notified and a Change Order is prepared. The unsigned Change Order is transmitted back to the CA for a final review whereupon it is returned to the CS for transmittal to the Contractor for signature. After signing, the Contractor returns the Change Order to the CS. Then both the CA and CS 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. CS retains original in project file.

If the proposed change appears not to impact cost, 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 CA, the Contractor, the Project Architect, and the Project Manager about the details involved in implementing the needed change. Only the CA and Contractor must approve the Field Instruction. Copies are transmitted to the CS and Accounts Payable 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.; CPPppm III(8).

- 6.53 Pre-final Inspection and "Punch List" Process: Once the Contractor determines that the project appears to be complete, the CA is so advised. The CA then notifies the Project Manager, the Project Architect, the Construction Inspector, OPC, 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 CA 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 CA in writing.

SUAM 9830 et seq.; CPPppm III(9)

- 6.54 Final Inspection, Acceptance, and Project: A Final Inspection is conducted after all punch list items have been completed by the Contractor. The CA 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 need to be asked to participate in the final inspection. The CA 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 CA 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 CA 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 CA to submit a list of "Items To Complete" which is comprised of non-critical matters that may be completed by the Contractor after the facility becomes usable. The facility may be utilized.

After the Acceptance Notification has been transmitted to the Contractor, the CA notifies CSUCI's director of Environment, Safety and Risk 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 CA or OPC personnel for appropriate distribution to campus personnel. The CA 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 that the project (as constructed) is in compliance with the contract documents are prepared and submitted to the CA 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 CA for enclosure in the Project File. The CA advises the Contractor to submit a 100% payment 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. The CA prepares a list of "Items to Complete", if any, that may be addressed by the Contractor at a later time.

PCC 10849; Code of Civil Procedure 337.15; SUAM 9830.03, 9831; CPPppm III(11).

- 6.55 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 CA, in consultation with the Project Architect, Construction Inspector, and CSUCI's director of Environment, Safety and Risk should first thoroughly weigh the ramifications of assuming the Contractor's risk and 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 decision is made to go forward with beneficial occupancy, the CA works with the Project Manager, the Project Architect, and the CS 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 CA and CS 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; CPPppm III(10).

- 6.56 Notice Of Completion: The CA requests that the CS prepare a Notice Of Completion for signature. The CS delivers the Notice to the County Recorder's Office for local property listing. One stamped copy of the filed Notice is delivered to the CS, and one to CSUCI's director of Environment, Safety and Risk. Upon receipt of the Notice the CS 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 CS 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; CPPppm III(12).

- 6.57 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 CA must be satisfied that the Contractor has satisfactorily concluded all project closeout requirements. If a warranty issue or any other contractual matter remains unsettled, the CA 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 CA has issued a letter to the Contractor that officially accepts the project, the Contractor may submit a final Request for Payment to the CA for the release of the available retention funds. The CA holds the request for thirty (30) days following the filing of the Notice Of Completion and until any outstanding Stop notices are cleared. The CA then signs and approves the request and forwards it to Accounts Payable, 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; CPPppm III(13).

- 6.58 CSU Claims Review Board: a CSU Claims Review Board must settle 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. 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.; CPPppm III(14).

- 6.59 Post-Project Performance Review: The contractor's performance should be evaluated and recorded by the CA 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 to invite the Contractor to bid again on future contracts. The signed performance report is placed into the project file.

PCC 1103; SUAM 9835 et seq.; CPPppm III(15).

- 6.60 Internal Closure and the Preservation of Project File Contents for Audit: After the project has been completed, the CA updates the project file 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 and expenditure accounts. If there is an agreement between the project file 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 CA and the CS assure 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; CPPppm III(16).

- 6.61 Project Capitalization: After receiving the filed (stamped) Notice of Completion from the County Recorder's Office, the CS transmits a copy of the Notice to Accounting 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.

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