



CIFAC
Construction Industry Force Account Council

The Nuts and Bolts of the Competitive Bidding Process

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DISCLAIMER

The information presented today is based on CIFAC's opinion and should not be interpreted as legal advice. Instead, all information, content, and materials available are intended for general informational purposes only. CIFAC strongly advises that participants contact their attorney to obtain advice with respect to any legal matter.



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Nuts And Bolts of Bidding — Part 1

- 1 Introduction to CIFAC
- 2 Public Contract Code
- 3 Public Contracting Authority

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Introducing CIFAC



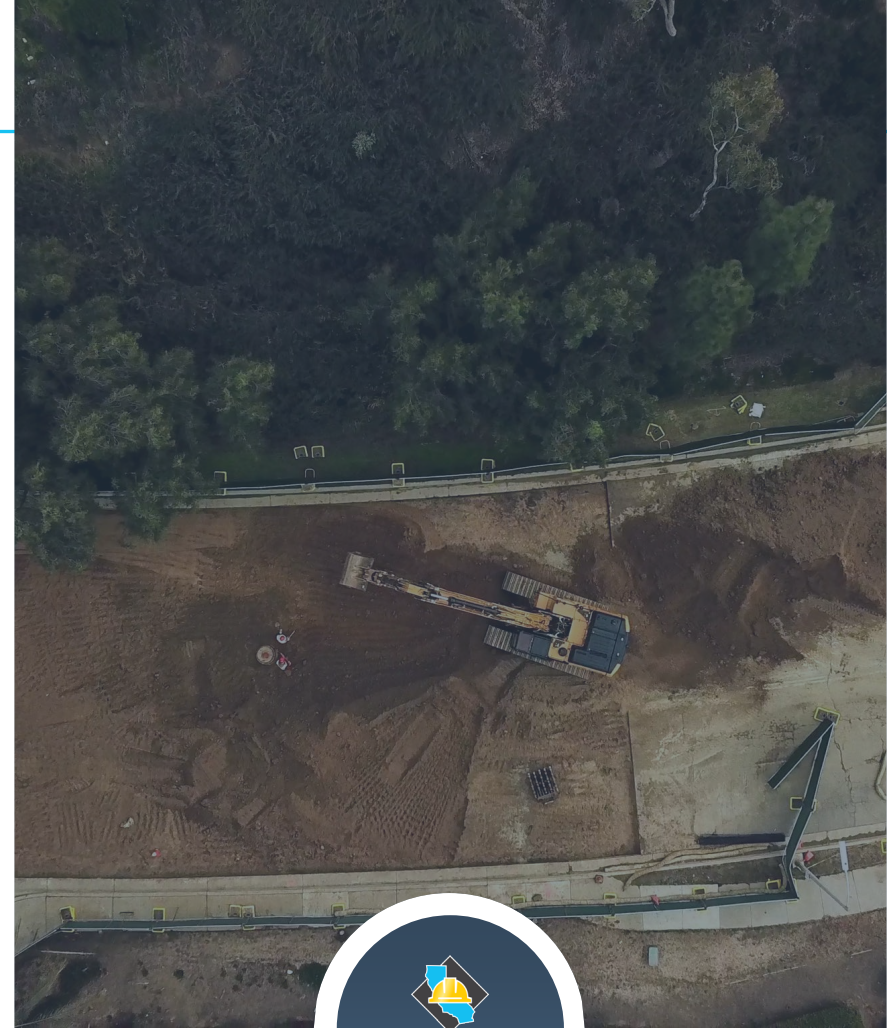
Created in 1977 to ensure agencies comply with bidding laws



Only organization in the State dedicated to PCC compliance



We are supported by and represent the public works construction industry





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What Does CIFAC Do?

- Monitors agencies
- Investigates potential violations
- Works with agencies to bring them into compliance
- Educates on PCC
- Acts as a resource
- Initiates complaints with various oversight bodies
- Litigates
- Legislates

Governing Authority

- PCC is the basis of contracts between agencies & contractors
- Public agencies have a duty to publicly bid contracts



Purpose of the PCC

- a) To clarify the law
- b) To protect the public from misuse of public funds
- c) To provide all qualified bidders with a fair opportunity to bid, stimulating competition in a manner conducive to sound fiscal practices
- d) To eliminate favoritism, fraud, corruption in the awarding of public contracts

What Is Force Account?



The use of an agencies internal labor force to complete work

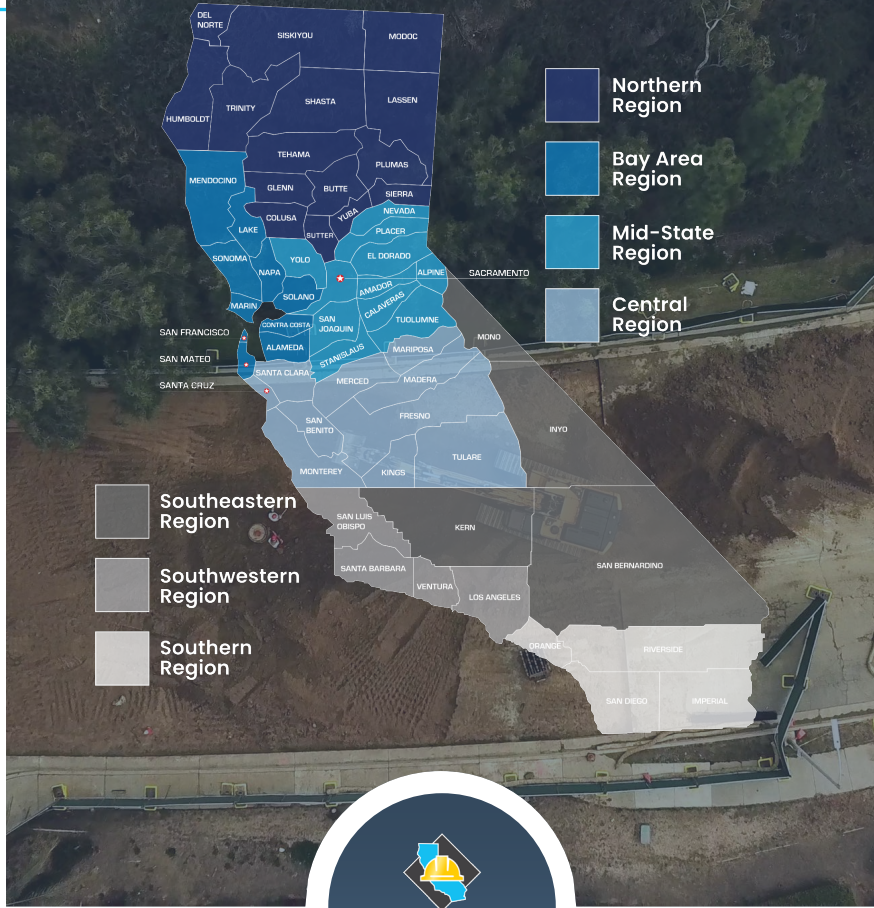


The dollar value of labor, material and equipment is calculated to determine if a project meets/exceeds the force account limit or bid threshold amount listed in PCC



This amount determines if the project must be competitively bid





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Void Contract Rule



Ca. Constitution & Supreme Court precedent precludes payments on contracts violating bidding laws



Ca. Supreme Court has recognized that a public agency may only contract pursuant to its authority



A public agencies authority to contract, and to make payments on a void contract, were analyzed in the seminal case of *Miller v. McKinnon*, 20 Cal. 2d 83 (1942)

Nuts And Bolts of Bidding — Part 2

- 1 Transparency
- 2 RFP / Invitation for Bids
- 3 Change Orders
- 4 Brand/ Trade Names
- 5 Emergency Contracting
- 6 Exceptions to Bidding

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Transparency



Provide details in staff reports



No deviations from proper process



If Rejecting bids – explain

Request for Proposals/Bids



- Avoid revising RFP during the bid or evaluation process
- Follow all bid requirements outlined in your RFP for award
- Don't narrow criteria to only one or two contractors

- Must prepare complete/accurate plans/specs & cost estimates
- PCC 1104 Prohibits agencies from holding contractors responsible
- Agency held liable for damages if plans/specs are bad

Los Angeles Unified School Dist. v. Great American Ins. Co., 49 Cal. 4th 739 (2010)

Change Orders



- C.O. can only be issued AFTER contract award for unforeseen conditions
 - Must be within original scope
 - Must be approved by agency, in writing
- Common rule is 10% but not applicable to all
 - Should not be used for extra work

Bid Wisely!

Change Order

Original Contract

Brand and Trade Names



PCC prohibits limitations on bidding to a specified brand name unless bidders are permitted to bid an “equal,” alternative product



IFB can't limit brand, trade or contractor names



Agency must name any other equal product of which it is aware that is manufactured in Ca.






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Emergency Contracting

- PCC §1102 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
- Agency must adopt resolution by four-fifths vote, take any directly related and immediate action required & procure the necessary equipment, services, and supplies without giving notice for bids
- Agency must review emergency action at its next regular meeting and at every regular meeting until the action is terminated

Exceptions to Bidding



 If the product or service is proprietary or may only be procured from one source

 If a project is an Emergency

 If the project is below your bid threshold

 Remember the intent of the PCC!



Common Fails!

- **Emergency contracting:** A 30+ year-old roof, that has been repeatedly patched over the years and needs to be replaced.
- **Emergency Contracting:** A delay in bidding that jeopardized bidding timeframes and may affect grant funds.
- **Sole Sourcing:** Dispensing with bidding to use a preferred local contractor to perform the work because he is familiar with our project.
- **Bid Splitting:** Splitting a flooring installation project into ten individual projects and not bidding them, because the flooring was taking place in ten different classrooms at that location.



Nuts And Bolts of Bidding — Part 3

- 1 Proper due diligence when vetting contractors/bids
- 2 Co-mingling of contractors
- 3 Co-mingling of documents
- 4 Subcontractor Listing



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Due Diligence Vetting Bids

- Is contractor appropriately licensed?
- Registered with DIR? (Unregistered contractor may not be hired! This can lead to agency penalties)
- Have Workers Comp?
- Possess the Knowledge, Experience, Capability to perform the work?
- Do all names match up on docs?
- Is their bid reasonable and inline with other bidders?
- Is bid accurate and complete?
- Do they possess all licenses to perform scope or list appropriately licensed subs?



**Performance
Bonds
Protect from
This!**



Responsibility & Responsiveness



In order to be awarded a contract, the low bid must be “responsive” to the specs & low bidder must be a “responsible” bidder



A bid is responsive if it promises to do what the bidding instructions require



A bidder is responsible if they can perform the contract as promised



Responsibility “includes the attribute of trustworthiness, quality, fitness and capacity of the bidder to satisfactorily perform the proposed work



How do I get more information?

For more information, helpful links or the latest news and reports use the following contact options:

 info@cifac.org

 www.cifac.org

 (800) 755.3354



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