

CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT FREQUENTLY ASKED QUESTIONS (FAQs)

These FAQs have been compiled to assist agencies that are participating in the California Uniform Public Construction Cost Accounting Act (“the Act”). Public Contract Code section 22000 et seq. Unless stated otherwise, all references are to the Public Contract Code.

1. What is the Uniform Public Construction Cost Accounting Act?

The Act is legislation that was enacted in 1983 to help promote “uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state.” Section 22001. The Act is a voluntary program that is available to all public entities in the State but it only applies to those public agencies that have “opted in” to the provisions set forth by the Act. The entirety of the Act is found at Sections 22000-22045.

2. What are some of the key provisions of the Act?

The Act allows for public project work in the amount of \$45,000 or less to be performed by the public agency’s force account, by negotiated contract, or by purchase order. Section 22032(a). Public projects in the amount of \$175,000 or less can use the informal bidding procedures set forth in the Act in Section 22032(b). Public projects at a cost of more than \$175,000 shall use formal bidding procedures to let the contract pursuant PCC Section 22032(c).

3. What are the benefits of the program?

- a) Increased force account limit
- b) Informal bidding for projects that are \$175,000 or less which do not require advertising.
- c) Reduces the number of formal bids.
- d) Expedited contracting for small projects.

Many participants laud the program because it gives them more leeway in the execution of public works projects; has speeded up the awards process; has improved timeliness of the project completion; has eliminated considerable red tape and cumbersome paperwork relative to advertising and filing of reports; and has simplified administration. Many agencies have encountered only minimal challenges with the accounting requirements and the overhead portion. Moreover, where required, the adjustment was relatively simple; most of the required procedures were already actually in place, so there was no noticeable change in the existing operations. The Standard Accounting Codes Structure will satisfy the reporting requirements when used properly.

4. Is the Uniform Public Construction Cost Accounting Act mandatory for public agencies?

No. The Act is a voluntary program

5. How does a public agency become subject to the Act?

The governing body must elect by resolution to become subject to the Act and file a copy of the resolution with the State Controller's Office. Section 22030. Sample documents are available at: http://www.sco.ca.gov/ard_cuccac.html. Once an agency has opted into the Act it will remain a part of the program.

6. May a public agency withdraw from the Act?

Yes. An agency may withdraw from the Act by filing a resolution of the agency's election to withdraw with the State Controller's Office.

7. What is the California Uniform Construction Cost Accounting Commission?

It is the Commission created to administer the Act. Section 22010. It consists of fourteen (14) members: thirteen (13) members are appointed by the State Controller and one is a designated member of the Contractors' State License Board. Seven members represent the public sector (counties, cities, school districts, and special districts). Six members represent the private sector (public works contractors and unions). The Commission members receive no salary, but are eligible for reimbursement of their direct expenses related to the Commission.

8. What are the Uniform Public Construction Cost Accounting Procedures?

They are procedures to be used to estimate costs for determining if a public project is required to be bid out and to capture and record actual costs when a public project is performed by the agency's own work force found at www.sco.ca.gov/ard_cuccac.html. The procedures follow normal accounting in the industry and in many cases are not much different from those already in place at the agency. Sample forms are available in the CUCCAC Cost Accounting Policies and Procedures Manual at http://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf

School districts may use the Standard Accounting Code Structure to comply with the tracking requirements.

9. Are the cost accounting policies and procedures applicable for agencies whose work force only performs maintenance tasks as defined in the Act and that contract all of its public projects to third parties?

The cost accounting policies and procedures are only applicable for agencies that perform public project work by force account. This does not exclude from the program agencies whose public projects are all contracted out. In fact, they might want to review the benefits available and elect to participate now in the event conditions change at some time in the future.

10. What is meant by the term “qualified contractors” as it pertains to the Act?

Qualified contractors are legally qualified contractors who perform work as a licensed contractor. In addition, the Commission has determined that nothing in the Act prohibits a participating agency from, at their discretion, using an objective pre-qualification process in the formation and maintenance of their Qualified Contractors lists.

11. Can a public agency disqualify or exclude certain contractors from the Qualified Contractors List required in Section 22034(a)(1)?

Agencies may disqualify contractors from the Qualified Contractors List when a contractor fails to furnish information to meet the minimum criteria as established by the Commission.

12. For agencies that do not maintain an informal bidders list, are they allowed to choose who will get notifications on information projects?

No. Section 22034(a)(2) provides for notifications to construction trade journals and exchanges in lieu of sending notifications to contractors on an informal bidders list.

13. What is the difference between qualifying contractors under the Act and requalification of contractors under Section 20101?

Qualifying contractors is a process that allows contractors to register with a public agency for notification of public works opportunities. The prequalification process under Section 20101 is a more complex process that requires a standardized questionnaire and evaluation of contractors using standard scoring criteria and does not apply to the Act. The prequalification process is applicable under the Local Agency Public Construction Act.

14. Must a public agency: (1) Notify contractors about public projects if the contractor is believed to not have the skills, credentials, or experience to perform the work required for the public project? (2) Consider bids submitted by a contractor that the public agency believes does not have the skills, credentials, or experience to perform the work?

- a) Yes. If a contractor is on the Qualified Contractors List the contractor must be notified by the agency of public projects for which he is licensed to perform. Section 22034(a)(1)
- b) Yes. All bids received from qualified contractors must be considered. Section 22034(a)(1).

15. Does the Act allow flexibility in cases of emergency and when repair or replacements are necessary to permit the continued conduct of the operations or services of a public agency?

For the purposes of the Public Contract Code, “emergency” is defined at Section 1102 as “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.” The Act sets forth in Section 22035(a) how a governing body would proceed in the case of emergency repairs or replacements. This section states, “In cases of emergency when repair or

replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.”

Section 22050 et seq. provides the emergency contract procedures to be followed in these cases.

16. Do the alternative bidding procedures apply only to public projects as defined in Section 22002(c)?

No. The alternative bidding procedures can be used when contracting for “maintenance work” as defined at Section 22002(d) or when contracting for other work that does not fall within the definition of “public work” as defined in Section 22002(c).

17. What will membership in the Act cost my agency?

Nothing. There are no membership fees or dues. However, the Commission does accept grants to assist it in carrying out its duties. Section 22015(c).

18. What are the most common concerns addressed by the Act?

These are:

- a) Cost accounting policies and procedures;
- b) Informal bidding procedures;
- c) Accounting procedures review.

The cost accounting requirements follow those common to the construction industry. The informal bidding on public projects up to \$175,000 is seen by the agencies as an asset enhancing project completion. Maintenance of a Qualified Contractor Bid List is routine, since interested contractors make it a point to be included on the list. While an accounting procedures review could potentially hold up a project for a minimum of 45 days pursuant to Section 22043(c)(1), these types of reviews have been rare in the Commission’s history.

19. Does an agency have to calculate an overhead rate in order to apply the accounting procedures?

No. Cities with populations of less than 75,000 shall assume an overhead rate equal to 20% of the total costs of the public project, including the costs of material, equipment and labor. Section 22017(b)(1). Cities with a population of more than 75,000, may either calculate an actual overhead or assume an overhead rate of 30% of the total costs of a public project including the costs of material, equipment and labor. Section 22017(b)(2).

20. When a public entity opts into the Act, does the Act supersede other contracting legal requirements such as statutory requirements for performance bonds, prevailing wages, and certificates of insurance, etc.?

No. The Act only supersedes the bidding procedures used once a public agency has opted into the Act and has notified the Controller. All other contracting requirements are applicable.

21. Can a public agency, claim to be to be exempt from following all of the requirements in the Public Contract Code by claiming they only have to follow the language and procedures within the Act?

The Act is part of the Public Contract Code therefore, if the Act is silent on a particular matter the rest of the Public Contract Code would apply.

22. If public agencies are not following the advertising requirements in the Act, will the Commission address those agencies? Can a complaint be brought to the Commission?

No. The Commission cannot review any complaint of improper advertising by any public agency. The Commission can only review the accounting procedures of a public agency when a complaint from an interested party provides evidence that the participating agency:

1. Performs work, after rejecting all bids, claiming it can do it less expensively. (Section 22042(a))
2. The work performed exceeded the force account limits. (Section 22042(b))
3. The work has been improperly classified as maintenance. (Section 22042(c))
4. A public agency is accused of not complying with the informal bidding procedures set forth at Section 22034. (Section 22042.5)

23. Section 20112 specifically requires school districts to advertise twice for a two week period, while Section 22037 requires advertising once, 14 days in advance of the date of opening of bids. How do participating school districts reconcile this conflict?

When the Act is in conflict with any other section in the Public Contract Code, the Act shall supersede. Advertising once, 14 days in advance of the date of opening of bids is what is required by the Act. Districts participating in the Act may choose to maximize their outreach by continuing to advertise twice.

24. May a public agency contract separately for like work at the same site at the same time using the under \$45,000 Force Account method?

No. Section 22033 provides that, "It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding". Separating "like work" would only be permitted as long as the total of all the "like work" is less than \$45,000. If the work is more than \$45,000, the

work needs to be advertised and bid according to the provisions of the Act (i.e. bid informally if the total amount is less than \$175,000 and bid formally if the total amount exceeds \$175,000).

25. May a public agency bid out 2 separate projects that occur at the same time and site, but are different types of work?

Yes, there is no violation if the work is being competitively bid. If the agency wants to use the negotiated or informal bidding processes, the agency must apply the appropriate limits to each of the projects. Each project must be separate in scope. Projects may not be separated by trade to avoid bidding. If the total of all jobs is greater than \$45,000; the informal or formal bid limits will apply.

26. How does a public agency process change orders when the standard code conflicts with the Act?

For contracts below \$45,000, the total cost of the contract may not exceed \$45,000. For informal contracts, under the Act, the limit is \$175,000. If the public agency is a school district, there may be additional limits and it is recommended the agency consult with their legal counsel for interpretation of change order limits.

27. Does a public agency by opting into the Act, automatically bring all departments of the public agency into the Act?

Yes. When a public agency elects to become subject to the uniform construction cost accounting procedures, the entire legal entity is considered subject to the Act and no divisions or departments will be exempt.

28. When a public agency opts into the Act, does it automatically bring all districts under control of the Board into the Act?

No. Special Districts, which are governed by a board of supervisors or city council, are only subject if a separate election is made for each special district.

29. PCC 22034 requires that participating agencies adopt an Informal Bidding Ordinance. What do schools and special districts that cannot adopt Ordinances do to comply?

The Commission cannot provide legal advice. The school districts and special districts should check with their own legal counsel on how to comply with Section 22034.

Additional inquiries and questions can be directed to:

State Controller's Office

Division of Accounting and Reporting or email LocalGovPolicy@sco.ca.gov

Local Government Policy Section

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