

CAPITAL PLANNING, DESIGN AND CONSTRUCTION
SECTION XII - CONSTRUCTION MANAGEMENT FOR PUBLIC WORKS CONTRACTS
SECTIONS 9700-9843

Updates in 2014 (Jan)

- 9701.01 Revised limit for minor cap projects.
- 9730.04 Revised thresholds to be in line with minor cap projects limits.

Updates in 2013 (Jul)

- 9721.08 Clarification made to credited portion of Work; reference made to section 22 of CM Procedures Manual, where allowance procedures have been inserted, i.e. process for reconciling allowances with actual costs.
- 9780.06 Dept. of Fair Employment and Housing requires the notice of contract award to be submitted via e-mail.
- 9780.07 Reworked section to reflect current reporting requirements and changes within DIR.
- 9785.02 Minor correction.
- 9792.01 Added allowance log and reconciliation with contractors log v. actual costs (only if no PM on project).
- 9792.04 Added allowance log and reconciliation with contractors log v. actual costs.
- 9810 Updated code citation.
- 9814 Updated to change 'withhold' to 'notice to withhold'.
- 9824.03 CSU Labor Compliance Program: updated to require online submission of certified payrolls for state bond-funded projects.
- 9833.01 Minor correction.

The following are updated to change 'stop notice' to 'stop payment notice'. Other revisions are separately noted.

- 9805 Updated code citations, and made clarifications.
- 9812 Updated stop notice payment claimant must now pay \$10, and CA must notify claimant of the expiration for filing of stop payment notices.
- 9813
- 9830.04-5 Updated code citations.
- 9834

Updates in 2012 (Nov)

- 9700.02 Changed reference
- 9700.03 Added inspection services to types of agreements
- 9701.01 Revised limit for minor cap projects and other related revisions
- 9701.02 Revised to include policies for maintenance work
- 9701.03 Updated reference
- 9701.04.01 Updated websites for CalEMA and cite for applicable regs
- 9701.07.02 Revised to delete ESAs, as they are no longer used.
- 9712 Updated language regarding campus certification
- 9720.03 Revised citation
- 9722.03 Minor revisions, provided Sample Forms website information
- 9723 Updated BidSync website information
- 9730 Minor revisions to #11.
- 9730.04 Updated costs per minor cap limit
- 9740-9743 Minor clarifications/updates
- 9740.03 Updated trade contractor prequalification requirements
- 9742 Update to prequalification requirement for JOC.
- 9763 Updated DVBE and other information
- 9765 Minor change
- 9774 Clarifications on different sub listings required
- 9780.01-2 Clarifications re: approvals
- 9780.03 Inclusion of new subcontractor directory form
- 9780.03.02 Procedure for use of subcontractor directory form
- 9780.03.03 Change in reference citation
- 9780.07 Updated to reflect replacement of DAS 13 with PWC-100; added requirement to notify file PWC-100 for all projects over \$1,000.
- 9780.08 New section providing information to enroll project in online CPDC Insurance database.
- 9781 Change to scan and e-mail NTP to CPDC
- 9792.01 Include updating online CPDC Insurance database quarterly with costs and completion date
- 9792.05-6 Added responsibility re: subcontractors on job v. subcontractor directory form
- 9810-13 Updated stop payment notice information and code cites
- 9815 Updated project funding sources

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- 9820.01 Updated re: new subcontractor directory form
- 9820.03 Updated to require CPDC review of any change in settlement language
- 9821.04 Request contractor to update subcontractor directory form with replacement subcontractor information when substitutions are approved
- 9822 Clarifications made re: sub listing forms
- 9824.03 Added additional funding types for project to be included in CSU Labor Compliance Program.
- 9832 Updated to include electronic archival of project files, and requirements for projects funded with tax-exempt bonds
- 9833.01 Added reference
- 9834 Clarifications re: completion

The following are updated to reflect the revised name of the Contract General Conditions:

- 9701.01 Minor Capital Outlay Projects
- 9701.06 Major Capital Outlay Projects
- 9701.07 Design-Build Major Capital Outlay Projects
- 9720.02.01 Competitive Bidding
- 9722 Contract General Conditions
- 9830.02 Occupancy Prior to Acceptance
- 9834.01 Final Payment for Minor Capital Outlay

Updates in 2011 (Apr)

- 9701.04.01 Major edits updating information for federally declared disasters
- 9701.10 New section "Federally-Funded Capital Outlay Projects"
- 9720.02 Minor clarifications made in title and text
- 9731.01 Added provisions for federally-funded projects
- 9786.03 Minor clarification made
- 9821.01 Changed title and added information regarding the hearing
- 9821.04 New section "Approval of Substitution and Replacement Subcontractor"
- 9821.05 Renumbering of section previously 9821.04, DVBE: Substitution of DVBE Subcontractor
- 9824.01 Added provisions for federally-funded projects

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9700 PUBLIC WORKS CONTRACTS

These procedures describe the requirements for preparing and administering public works contracts under the provisions of California State University (CSU) Contract Law, Public Contract Code section 10700 *et seq.* Campus presidents or their designees have been delegated authority to execute and administer certain public works contracts in conformity with the requirements of the law and CSU policy (Executive Order 672; Coded Memos ABS 86-39 and BF 95-17; Budget Act section 6.00). The following procedures are intended to assist the campuses in fulfilling these requirements.

Parties to the agreement: The contract is with the state of California. Contracts between a contractor and the Trustees of the CSU, the CSU, a specific campus or group of campuses of the CSU, between a contractor and a school, department, or other subdivision of the CSU, or between a contractor and an officer or employee of the CSU acting in an official capacity, all are considered, and are in fact, contracts with the state of California. However, a contract between an auxiliary organization of the CSU and a contractor is not a contract with the state of California. Refer to SUAM section 9701.09 for more information.

9700.01 PUBLIC WORKS DEFINITIONS

For definitions relating to this section, see ‘Appendix A, Definitions.’

9700.02 DELEGATION OF AUTHORITY

Authority is delegated to each president to execute and implement the following contracts on behalf of the Board of Trustees of the California State University under the provisions of the California State University Contract Law and subject to the conditions stated in Executive Order No. 1057:

- Agreements, contracts or other documents necessary to carry through any approved state or non-state funded public works project, special repair projects, facility equipment (built-in) installations, if the estimated project cost does not exceed the value of a minor capital outlay project pursuant to Public Contract Code section 10108. Agreements and contracts for projects when the estimated cost exceeds the value of a minor capital outlay project (see SUAM section 9701.01) must be submitted to the Office of the Chancellor (General Counsel) for review and approval.
- The performance of a public works project with day labor when the total amount of the day labor does not exceed \$20,000.

The Office of General Counsel must approve all service agreements in connection with a construction project (Public Contract Code section 10707).

9700.03 SERVICE AGREEMENTS RELATED TO PUBLIC WORKS

Service agreements in connection with public works construction contracts, including but not limited to agreements for architectural, engineering, planning, testing and inspection services, and general feasibility studies are executed pursuant to the authority of Public Contract Code section 10707 and in conformance with SUAM sections X and XI, 9200 *et seq.* and with section XII, 9701.07.02, 9786, 9786.01, 9786.02 and 9786.03.

9700.04 BUILD AND INSPECT PER CODE

All projects are subject to the numerous codes governing the CSU and public works construction. The deputy building official on each campus is responsible for the validation of code compliance process on that campus. Refer to Health and Safety Code sections 18901-18949.6 and California Building Code (CBC) section 101.17. These codes require that the building official issue a validation of code compliance for all physical improvements. Refer also to SUAM section 9232.

Building per code takes a normal, well-disciplined path on a major project with the design by a licensed professional, with all regulatory and Trustees-required plan checks, with continuous inspection by an inspector of record, with specialty inspection by geotechnical and materials testing labs, and final inspections by the deputy building official, the state Fire Marshal, and other regulatory entities (for elevators, kitchens, tanks, pools, etc.).

Similar standards must apply to minor projects and special repair (including job order contracts), and work performed by campus forces as applicable. The campus’ deputy building official shall assure that the smaller projects are designed and built per code. It is required that all projects that erect, construct, enlarge, repair, move, improve, remove, convert, and demolish have a written approval from the building official except for the very minor work as

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exempted by the CBC, such as fences not over six feet high, counters and partitions not over 5'9", on-grade walks, drives, and platforms, etc.

To ensure compliance with these statutes, a written validation of the projects compliance with the California Building Code must be provided by the campus' deputy building official prior to the start of any physical improvements (other than those exempted by the California Building Code as noted above), and that validation shall be permanently retained. The university building official in the chancellor's office, or the deputy building official as appointed at the campus, or an authorized designee working under the deputy building official's supervision shall perform all duties assigned by code to the building official.

9700.04.01 CONSTRUCTION PHASE CODE REQUIREMENTS

A series of construction phase activities relating to validation of code compliance, inspections and certificate of occupancy are required of the building official by explicit direction of the California Building Code (CBC).

Written Code Validation: No physical work may be initiated without a written code validation approved by the Building Official or designee.

Inspections: All work shall be subject to inspection by the building official, or a designated inspector acting in behalf of the building official. The building official must maintain a written record of required inspection. Work may not progress beyond a required inspection nor shall it be covered up until inspected by the building official or designee.

SUAM section 9785.01 relates the necessity to be properly credentialed as an inspector of record (IOR). The IOR has a very broad role as described in SUAM sections 9792.05 through 9792.08, which generally requires either inspecting all work on a project alone or requiring it to be inspected by a specially credentialed inspector from a geotechnical or materials laboratory as necessary.

Certificate of Occupancy: The building official shall issue a certificate of occupancy, and this shall include:

1. the building code validation number, or indication of the specific area of work,
2. the address of the building, or building number or identifier,
3. the name of the owner i.e. Trustees of the CSU or the appropriate auxiliary for non-state projects,
4. a description of the portion of the building, for which the certificate applies,
5. a statement that the project has been inspected for compliance with the requirements of the code,
6. the name and signature of the building official (campus deputy building official).

The campus shall permanently retain the final certificate of occupancy as described above with the initial validation of code compliance as provided by the campus deputy building official. It is not to be confused with a recorded notice of completion (refer to SUAM section 9830.04).

9701 CATEGORIES OF PUBLIC WORKS PROJECTS

Public works contracts must be awarded to the lowest responsible bidder, and shall be based primarily on plans and specifications for typical work. Payment of prevailing rate wages is required on all public works projects in excess of \$1,000 per the Labor Code section 1771, refer to SUAM section 9824. All work shall be subject to inspection by the building official or a designated inspector acting on behalf of the building official, refer to SUAM section 9700.04. Prior to completion of the project, the contractor shall submit the "as-built" drawings and marked-up drawings of the work completed. Refer to Contract General Conditions, "Conduct of the Work," and SUAM section 9832.01.

Construction Management in CPDC maintains the Contract General Conditions and Supplementary General Conditions for these contracts, and they are posted on the web at www.calstate.edu/cpdc, under "Construction Management." Construction administrators shall check this web site prior to advertising to ensuring use of the most recent version in the Contract Documents.

Notification of the SETC-Unit 6 Skilled Crafts Union must be performed per the current language in the collective bargaining agreement for Unit 6, whenever the project represents work normally performed by Unit 6. Prequalification of bidders is required for all projects for which the estimated cost exceeds the value of a minor capital outlay project pursuant to Public Contract Code section 10108. (Refer to SUAM section 9740 *et seq.*).

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A contractor or a consultant under contract with the University shall not concurrently donate construction work or consulting services, unless the University can justify and document that work is truly donated and that it does not diminish the attention required to be given to the non-donated contract work. Such documentation shall be placed in the public works project contract file. Also, the contractor or consultant shall not monitor or inspect the donated construction work or service.

9701.01 MINOR CAPITAL OUTLAY PROJECTS

Minor capital outlay (construction) projects are those projects that correct deficiencies, provide new or improved facilities, or provide equipment for new or improved facilities and are estimated to cost \$634,000 or less, which is the adjusted value of a minor capital outlay project pursuant to Public Contract Code section 10105(b). Contracts for minor capital outlay projects are exempt from chancellor's office review and approval (per Executive Order 1057), and would incorporate the Contract General Conditions for Design-Bid-Build Minor Projects and Sample Forms, which are available on the CPDC web site. Prequalification of bidders is optional for minor capital outlay projects.

9701.02 REPAIRS/MAINTENANCE

Contracts for repairs and maintenance projects would incorporate into the Contract Documents the appropriate Contract General Conditions (minor if project is less than value of a minor capital outlay project, and major if greater) and Sample Forms, which are available online at www.calstate.edu/cpdc/CM. Prequalification of bidders prior to issuing bid proposal packages is optional for minor projects, but is required for major projects,

9701.02.01 SPECIAL REPAIR/PLANT REPAIR

Special repair, plant repair, and/or capital renewal funds are allocated for campus projects that are designed to continue the usefulness of a facility at its current or originally designed level of service. Examples of these projects, regardless of cost, are repainting a facility, re-roofing, electrical repairs, plumbing repairs, road repairs, and also replacement of deteriorated equipment such as motors, boilers, and chillers. The contracting methodology for these projects funded from the above-mentioned funding sources is determined by application of policy regarding project cost (minor capital outlay project cost limitation), the definition of "project" per Public Contract Code, and the definition of "maintenance" per California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Article 16000. Refer to CPDC memo "Contract Methods for Maintenance Tasks", available online at http://www.calstate.edu/cpdc/cm/policy_reference_doc.shtml.

9701.02.02 MAINTENANCE

California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Article 16000 provides a definition of maintenance, and is reprinted below.

Maintenance projects include:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.
- (2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.
Exception: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.
Exception: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.
- (3) Landscape maintenance. See Public Contract Code section ~~21002~~ 22002*.
Exception: Landscape maintenance work by "sheltered workshops" is excluded.

*Error in citation: confirmed by Westlaw.

Maintenance work may be contracted through the use of a service order or a service contract, and may incorporate contract terms typically associated with construction projects. If using the service order or contract, campus shall follow requirements in ICSUAM 5000. Maintenance work may be contracted as a construction project utilizing the construction Contract General Conditions and construction agreement; in this case, campus shall follow the requirements of SUAM 9700-9843.

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In determining which contract type to use for the maintenance work, campus needs to determine if the maintenance work to be done is “simple” or “involved”. As used herein, “simple” is defined to mean a simple repair or one which would not require most or all of the provisions found in the construction Contract General Conditions, like liquidated damages, schedule, etc. Maintenance work that is simple in scope may be contracted using a service order or contract. “Involved” is defined to mean a very complex repair, one which would require most of all of the contract provisions found in the construction Contract General Conditions; the contract procurement of choice for maintenance work that is complex or “involved” in scope would be a project, utilizing the minor or major construction Contract General Conditions and construction agreement. Contractor prequalification is required on major projects.

Example:

- 1) Roofing (patching): this is maintenance work; prevailing wage applies, campus may use a service order/contract; it is not a construction project.
- 2) Re-roofing (involved): this is maintenance work; prevailing wage applies, campus may not use a service order/contract; it is recommended to perform this work as a construction project.

Contracted maintenance work (service order/contract or construction agreement) over one thousand dollars (\$1,000) is subject to payment of prevailing wage.

Maintenance and repair projects that are performed as construction projects must be contracted pursuant to SUAM 9700 *et seq.*

9701.03 REPETITIVE WORK PROJECTS (JOB ORDER CONTRACTS—JOC)

The California State University has authority under Section 10710 of the Public Contract Code to award annual contracts that do not exceed \$3,000,000 for repair, renovation, modifications and other repetitive work, which is to be done by unit prices. “Unit price” means 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. The California State University has established a Master Enabling Agreement with a Job Order Contract (JOC) Service Provider to establish a unit price contracting system. Campuses may execute a Campus Participation Agreement with the JOC Service Provider to secure services under the Master Enabling Agreement at each respective campus. The Master Enabling Agreement and the Campus Participation Agreement forms can be found on the Contract Services and Procurement web site: www.calstate.edu/csp, under “Public Works.”

Once the campus has executed a Campus Participation Agreement with the JOC service provider, the campus may advertise and solicit bids from general contractors for an annual JOC contract. Campuses shall provide the minimum and maximum amount of the JOC contract in the advertisement. Note that the maximum amount shall be specified in the Special Conditions for the contract. Each job order proposal is required to comply with the DVBE and subcontractor listing requirements of the contract. Total costs for individual job orders under these job order contracts are not to exceed the value of a minor capital outlay project (SUAM section 9701.01). A bidder’s security of \$25,000 is required for these contract bids, regardless of size.

Annual job order contracts require contractor prequalification prior to issuing bid proposal packages and Office of General Counsel approval, if the maximum total amount of the job order contract is estimated to cost more than the value of a minor capital outlay project pursuant to Public Contract Code section 10108. The bidder’s available prequalification rating shall be not less than 50% of the maximum amount of the job order contract, and this amount includes possible funds to be added to contract, if known at time of bid. If the original job order contract is amended during the term to increase the awarded contract value, the Contractor shall furnish additional or revised performance and payment surety bonds, so that each such performance and payment bond equals 100% of the increased maximum contract value. Reference is made to SUAM section 9835.03 for evaluation of job order contractors.

9701.04 EMERGENCY CONSTRUCTION PROJECTS

The campus must follow all the bidding requirements and prescribed procedures for all public work projects except in instances when an emergency exists or where discretion has been exercised in accordance with Section 10705 of the

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Public Contract Code. The emergency must be due to an act of God, such as earthquake, flood, storm, fire, landslide, public disturbance, vandalism, or other unexpected cause, which results in damage to a state-owned building, state-owned real property, or any improvements thereon, and immediate work and remedial measures are required to protect the public health, safety, and welfare. This might include emergencies such as an unforeseen power failure that would cause serious dislocation or material disruption of the campus educational mission. In these situations, the campus may have the work done by day labor under the direction of the campus, by contract through informal bids, or by a combination of day labor and contract. However, unless there is an immediate threat of damage or injury to persons or property, the campus shall make an effort to secure at least three written bids on such contracts, awarding the contract to the lowest bidder (Public Contract Code section 10722). Note that even in an emergency, some form of bidding ("informal bid") is required. Hiring a contractor without bidding is not authorized.

9701.04.01 FEDERALLY DECLARED DISASTERS

If the emergency is a federally declared disaster, and the campus intends to request reimbursement from Federal Emergency Management Agency (FEMA) for disaster-related costs, then the campus should refer to the appropriate website links listed at the California Emergency Management Agency (CalEMA) website for Public Assistance: <http://www.calema.ca.gov/Pages/default.aspx> .

As part of disaster preparedness, the campus should periodically review the Public Assistance links at CalEMA, as some material may change due to changes in federal or state law, or due to changes in federal or state disaster assistance regulations and related procedures. In general, FEMA and CalEMA will require that claims for repair costs are supported by creditable evidence that they are in fact due to the disaster and not due to, for example, deferred maintenance. Depending upon the scope of the disaster damage, campuses may wish to consider hiring a consultant to assist with preparation of the List of Projects, which can be found on the above CalEMA website.

If feasible, the campus should try to prepare the List of Projects prior to attending the Applicant Briefing for the particular disaster, as this will expedite the scheduling of the FEMA and CalEMA inspections, and thus expedite the overall reimbursement of eligible costs. Although normal CSU procurement and contracting procedures will be used for much of disaster repair, campuses should use care in the procurement process during the debris-removal/protective measures stages. Traditional cost-plus-a-percentage-of-cost contracts are not eligible for reimbursement under FEMA regulations. Also, time-and-material contracts should have contractor-at-risk not-to-exceed ceilings, and change orders to raise the ceilings should be properly documented as to reasonableness (44 Code of Federal Regulations, Parts 13 and 206; Office of Management and Budget, Circular A21, A110, A133; Stafford Act). As a starting point, the responsible campus procurement staff and construction management staff may review [44 Code of Federal Regulations, Part 13](#).

9701.04.02 EMERGENCY CONTRACT REPORTING

The CSU is required to report to the Department of Finance and the Joint Legislative Budget Committee annually before December 31 all exemptions from the bidding process due to "unexpected causes" (see Public Contract Code section 10722). This includes contracts awarded informally through telephone solicitation, but does not include contracts awarded after written solicitation of bids. The campus must ensure that all such instances are reported to the chancellor's office. To file a report, the campus shall prepare a memo indicating there was an emergency on the campus that required exemption from the bidding process, state the nature, date, and location of the emergency, actions taken, contractor and contract amount, and duration of project. Submit the memo to the CPDC, Facilities Planning unit, within ten working days of each such occurrence.

9701.05 DAY LABOR

If the campus determines that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state, it may carry out the work by day labor. The amount of work performed on any project by day labor shall not exceed \$20,000. This limitation applies only to labor costs and does not include materials (Public Contract Code section 10705). The following information is intended to assist in the acquisition of day labor and insure compliance with associated regulations and CSU policy.

Day labor may be paid as a "trade rate" when hired as a skilled laborer, casual employment classification. Trade rate wage and benefit payments are determined for a respective county by the general prevailing wage rate issued by the state of California, Department of Industrial Relations. The University is required to pay day laborers the prevailing

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hourly rate along with fringe benefits. Fringe benefits typically include health and welfare; pension; vacation and holiday, and training.

In cases where the day laborer is a member of a union, the fringe benefit portion shall be made payable to their respective trust account. In the event the day laborer is not a member of a governing union, the fringe benefit amount shall be paid directly to the day laborer, after income tax has been withheld by the State Controller's Office. Campuses will determine which departments will be responsible for facilitating day labor. Contact the Division of Labor Statistics and Research at (415) 703-4774 to obtain prevailing wage determination.

9701.06 MAJOR CAPITAL OUTLAY PROJECTS

Capital outlay construction projects for which the estimated costs exceed the value of a minor capital outlay project (see SUAM section 9701.01) are major, and for these projects, the Contract General Conditions for Design-Bid-Build Major Projects shall be included in the Contract Documents. State site acquisition projects, regardless of the amount, are funded as major capital outlay. Reference SUAM I, sections 9001-9004.

9701.07 DESIGN-BUILD MAJOR CAPITAL OUTLAY PROJECTS

The authority for CSU to procure a major capital outlay project through use of the design-build method is Public Contract Code section 10708. The Design-Build Request for Proposal Model and Guidelines is the standard for campuses to follow in preparing a Request for Proposal (RFP) for a design-build major capital outlay project. CPDC maintains the Design-Build Request for Proposal Model and Guidelines on the following website: http://www.calstate.edu/cpdc/CM/rfp-design_build.shtml. The Contract General Conditions for Design-Build Major Projects are located there.

9701.07.01 STANDARD DESIGN-BUILD MAJOR CAPITAL OUTLAY PROJECTS

The model outlined in the RFP procedures and manual has been carried forward from design-build project to project, using the latest reviewed and approved RFP as a guide in developing any subsequent RFP. These projects are more susceptible to protest due to the high costs incurred by contractors and design teams in competing for selection. The manual standardizes the RFP format and boilerplate by establishing firm guidelines for the purity of the competition and selection process and in the interest of having a successful award of contract without protest.

When preparing a design-build project, follow the model as established in the RFP manual, and request a copy of the most recently advertised RFP project documents or obtain a referral to the responsible campus from CPDC. During the RFP development process, communication with CPDC's university planner, the campus attorney in General Counsel, and the Office of Financing and Treasury is necessary. Submittal of the draft and final RFP documents to CPDC for review is required as is done for conventional major capital outlay projects (see SUAM I, section 9002).

9701.07.02 ENERGY SERVICE AGREEMENT (ESA): DESIGN-BUILD PROJECTS

The Energy Service Agreement Design-Build Projects public works methodology has expired, and is no longer in use.

9701.08 CONSTRUCTION MANAGER AT RISK WITH GUARANTEED MAXIMUM PRICE PROJECTS

As with Design-Build, the Construction Manager at Risk with Guaranteed Maximum Price (CM at Risk) Model and Guidelines is the standard for campuses to follow in preparing a project for CM at Risk method of procurement. CPDC maintains the CM at Risk Model and Guidelines on its website (http://www.calstate.edu/cpdc/CM/CM_at_Risk.shtml).

9701.09 MAJOR CAPITAL OUTLAY PROJECTS ADMINISTERED BY AN AUXILIARY

Any construction project that is located on California State University property and funded in whole or in part by public funds, and that is performed pursuant to a contract entered into or awarded by an auxiliary organization, is subject to CSU Contract Law, and this project shall be under the sole and direct control of the Trustees. In this case the campus would use the standard Trustees' Contract General Conditions.

If the project is purely donor funded, then CSU Contract Law need not apply; however, it is prudent to follow these statutes. Remember that certain statute-driven requirements, such as the contractor's license law, still apply to these projects. Reference the "Required Contract Provisions" chart in SUAM Appendix D. The "Auxiliary Contract

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General Conditions for Design-Bid-Build (Major Capital Outlay) Projects” has been created for foundation/auxiliary-administered projects, and are available on the following web site: <http://www.calstate.edu/cpdc/CM/CGC.shtml>. Campuses should check with CPDC when unsure of the legal requirements for these foundation/auxiliary projects.

If CSU staff are called upon to inspect, superintend, or administer foundation/auxiliary projects, the campus is required to establish the services to be performed for the foundation/auxiliary and fees to be paid for those services in writing prior to the start of the project, documenting this clearly. If any public funds or efforts by state employees are expended on a foundation/auxiliary project without a lump-sum or time-and-material contract in place for recovery of these state costs and efforts, then the project is no longer a foundation/auxiliary (or private) project, but becomes a public works project, and all of the CSU Contract Law and other public works statutes, such as DVBE and prevailing wages, shall apply. See the two samples of the “Memorandum of Understanding” in Appendix D. One of them is for a project wholly or partially funded with public funds, and the other for projects wholly funded without use of public funds.

9701.10 FEDERALLY-FUNDED CAPITAL OUTLAY PROJECTS

Whenever a construction project is funded in whole or in part by federal funds, campus must include federal contracting requirements, such as Davis-Bacon Act requirements, pursuant to the requirements of the specific federal funding for the project. Federal funding requirements vary widely, so construction administrator/contract administrator should review the contract requirements identified in the funding source document, i.e. grant.

Throughout SUAM Section XII, Construction Management, the chancellor’s office construction management staff have inserted procedures for federally-funded contracts when appropriate.

9710 CONSTRUCTION MANAGEMENT FOR PUBLIC WORKS PROJECTS

This section outlines the procedures for construction management and sets forth the responsibilities, duties, and limitations of those involved in the interactions of the construction management phase of a public works project.

The construction management phase extends from final approval of working drawings to the closing of the project account. It includes advertising for bids, bidding, award of contract, construction administration, contract acceptance, claims negotiation and settlement, the guarantee period, and deficiency correction. Forms referenced in this section can be found in Appendix D.

The functions of construction management for public works projects can be divided into three phases, based on the nature of the duties performed. These are:

- Phase I:Bidding and Award of Contract
- Phase II: Construction Administration
- Phase III: Guarantee of Construction and Equipment

9711 CONSTRUCTION MANAGEMENT AUTHORITY

The Board of Trustees of the CSU, under the powers granted to it by the Legislature, has direct and sole responsibility for the contract management of public works projects funded from state funds appropriated to the CSU for public works projects, Public Contract Code section 10700 *et seq.* It is the contracting party for all public works projects. Construction contracts awarded by the Trustees are managed either by CPDC through the Construction Management unit or by the campus. This management role will hereinafter be identified generically as Construction Administrator. The construction administrator shall have thorough working knowledge of the appropriate contract general conditions prior to advertisement of any project.

9712 ADMINISTRATION OF PUBLIC WORKS PROJECTS (CONSTRUCTION MANAGEMENT)

The Trustees administer construction for any public works project through one of the following: 1) the campus via certification in accordance with Executive Order No. 672; 2) the campus via a Memorandum of Delegation (MOD); or 3) the Construction Management unit of CPDC.

9712.01 CAMPUS CERTIFICATION

With the issuance of Executive Order No. 672, the chancellor delegated authority to manage the capital outlay process to campus presidents, and a process for reviewing projects to maintain their delegated authority. The terms of

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each campus's delegated authority are specified in the delegation agreement between the campus and the chancellor's office. See SUAM I, section 9002 for more information.

9712.02 MEMORANDUM OF UNDERSTANDING

CPDC and a campus may execute a Memorandum of Understanding (MOU) to establish special support of campus project management. Such special support is in addition to CPDC's normal chancellor's office role, and may include construction management, architectural, planning, administration and other services.

9712.03 CPDC CONSTRUCTION MANAGEMENT

CPDC's construction manager, with the assistance of the design professional, performs the construction administrator role for either: 1) a chancellor's office project, or 2) a campus without delegated authority to manage a major capital project.

9712.04 PREQUALIFICATION

The Construction Management unit in CPDC performs prequalification of prospective bidders, whether CPDC or the campus administers the project. The construction administrator should notify the prequalification coordinator when the project is advertised in order to streamline the prequalification process. More information on prequalification can be found in SUAM section 9740 *et seq.*

9720 PHASE I: BIDDING PROCEDURES/AWARD OF CONTRACT FOR PUBLIC WORKS PROJECTS

To ensure compliance with the Public Contract Code section 10700 *et seq.* and to avoid protests from bidders, unions, and other concerned parties, bidding on public works projects is a formal, rigidly controlled procedure. Varying bidding procedures, as specified below, apply for different contracts.

9720.01 CONTRACTS (THE ESTIMATED COST OF) WHICH ARE \$5,000 OR UNDER

Contracts for which are estimated to cost \$5,000 or under need not be bid (Public Contract Code section 10705). For these contracts, whenever there is reason to believe a response from a single source is not a fair and reasonable price, the Trustees shall obtain at least two written bids from responsible contractors.

9720.02 CONTRACTS (THE ESTIMATED COST OF) WHICH EXCEEDS \$5,000, BUT DO NOT EXCEED THE VALUE OF A MINOR CAPITAL OUTLAY PROJECT

For contracts for which the estimated cost exceeds \$5,000, but does not exceed the value of a minor capital outlay project pursuant to Public Contract Code section 10108, "the Trustees shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids" (Public Contract Code section 10705). Since Public Contract Code section 10705 allows that the application of all provisions in California State University Contract Law are not required for projects where, in the opinion of the Trustees, the nature of the work is such that the general advertisement provisions of Public Contract Code section 10740 *et seq.* need not apply for these projects (Refer to SUAM section 9723.03).

Although Public Contract Code section 10705 may free a project from complying with the provisions of the California State University Contract Law, it does not free a contract from complying with the provisions that are external to California State University Contract Law. These provisions include:

- contractor must have appropriate license (Public Contract Code section 3300)
- subcontractor listing (Public Contract Code section 4100 *et seq.*)
- DVBE, unless its application is excused by the awarding authority (Public Contract Code section 10115 *et seq.*)
- payment bond requirement (Public Contract Code section 7103)
- advertisement in California State Contracts Register (Government Code section 14825 *et seq.*) cannot be ignored, but an exemption to do so may be filed for a project.
- small business advantage (Government Code section 14835 *et seq.*)

9720.02.01 COMPETITIVE BIDDING

The Trustees may solicit bids from competent firms (from a bidder pool, and at least three firms recommended), hold a public bid opening, including sealed bids opened at a specifically prescribed time, and with intent to award the contract to the lowest responsible bidder. The bid documents shall be issued in sufficient detail to cover the scope of

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work for competent, competitive bids, complete with contract requirements (Contract General Conditions for Design-Bid-Build Minor Projects).

9720.02.02 CONTRACTS (THE ESTIMATED COST OF) WHICH EXCEED \$5,000 BUT ARE LESS THAN THE COST LIMIT IDENTIFIED IN PUBLIC CONTRACT CODE SECTION 10105

The Trustees may award a contract that has an estimated value of greater than \$5,000, but less than the cost limit as identified in Public Contract Code section 10105, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as written bids are obtained from two or more certified small businesses, including microbusinesses, or from two or more disabled veteran business enterprises. In implementing this provision, the Trustees shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

9720.03 CONTRACTS (THE ESTIMATED COST OF) WHICH EXCEED THE VALUE OF A MINOR CAPITAL OUTLAY PROJECT

Contracts for which the estimated cost exceeds the value of a minor capital outlay project (see SUAM section 9701.01) must follow all of the bidding provisions of the California State University Contract Law.

9721 PREBID MEETING

The construction administrator shall meet with the campus representatives and the design professional prior to advertising for bids. The purpose of this meeting will be to discuss the final preparation of the project plans, specifications, and documents for bidding, and for setting the bid schedule. A typical agenda for this meeting is included in Appendix D. The following subsections provide more detail on some of the agenda items.

9721.01 BRAND OR TRADE NAME

Per Public Contract Code section 3400, the construction administrator shall not draft, or cause to be drafted, specifications for bids in connection with the construction, alteration, or repair of public works,

1. in a manner that limits the bidding, directly or indirectly, to any one specific concern, or
2. calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service.

CPDC recommends that, if the construction administrator deems it necessary to call for a designated material, product, item, or service by specific brand or trade name, then at least two brands or trade names of comparable quality or utility should be listed followed by the words "or equal."

9721.01.01 EXCEPTIONS TO "OR EQUAL" REQUIREMENT

The "or equal" provision may, on rare occasions, be eliminated when a product or system must match an existing product or system on the campus. A construction administrator specify a brand or trade name (sole source) in the specifications only if the construction administrator makes a finding (described in the specifications) that a particular material, product, thing or service is designated by specific brand or trade name for any of the following purposes:

1. in order that a field test or experiment may be made to determine the product's suitability for use,
2. in order to match other products in use on a particular public improvement either completed or in the course of completion,
3. in order to obtain a necessary item that is only available from one source,
4. in order to respond to an emergency declared by the state, (but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the Trustees).

Expanding the energy management controls system existing on campus is an appropriate use of sole source.

9721.01.02 REQUESTS FOR SUBSTITUTION

The specification must provide a period prior to or after, or prior to and after, the award of the contract for the contractor to submit data to substantiate a request for a substitution of an "equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract (Public Contract Code section 3400). Note that Contract General Conditions state the default of Section 3400: "the bidder shall submit its proposal to the architect for an alternative as an "equal" in writing no later than 35 days after the award of the contract, unless otherwise specified in the Supplementary General Conditions."

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CPDC strongly recommends that campuses specify “A, B or Equal,” and require a deadline for submittals of proposed equals that is not less than ten days prior to bid opening. The architect can then review the submittals and issue an addendum identifying the acceptable product(s) and the requested products.

Similarly, the specification must state that the contractor shall submit a request for substitution of an “unequal” item, no later than 35 days after the effective date of the Notice to Proceed (reference Contract General Conditions, Article 5.04, “Shop Drawings, Samples, Alternatives or Equals, Substitutions”).

9721.02 PROPRIETARY SPECIFICATIONS

Technical specifications prepared for bidding public works projects must provide for fair and equal competition among potential bidders. Specifications supplied by vendors or manufacturers should be reviewed carefully to ensure that they do not limit the bidding to a particular company, brand, or trade name. Any person who prepares specifications for the campus is expected to be knowledgeable in the field and to be aware of the existence of equal brands or products. To avoid conflict of interest, any person or firm preparing specifications for a project should not be eligible to bid on the project or to work on the project as a subcontractor.

9721.03 CONSTRUCTION LICENSE

The construction administrator must determine the appropriate construction license to require of bidders for a project. The two primary licenses are ‘A’ for engineering projects and ‘B’ for building projects. Additionally, there are numerous specialty licenses that are designated ‘C’ with a number, responsive to the specialty. The construction administrator should consult with the design professional, the license law, and the Contractors State License Board, if necessary, to determine the appropriate license to require and include in project advertisements. Take care to do this correctly so as not to evoke bidder protests. Section 7028.15 of the Business and Professions Code requires a contractor to be licensed in order to submit a bid to a public agency, and further instructs the public agency to reject the bid as nonresponsive if the contractor is not licensed in accordance with the chapter and with certain limited exceptions. An exception exists for contracts where federal funds are involved; the contractor must also be properly licensed at the time of award (see Public Contract Code section 3300(a)).

9721.04 LIQUIDATED DAMAGES

Liquidated damages are to be assessed if the project does not complete on time (Public Contract Code section 10826, Contract General Conditions Article 7.02). The construction administrator must determine the appropriate liquidated damages to require for the project. Liquidated damages should cover anticipated costs for a contractor’s failure to finish the project or to meet specified milestones on time. Items to consider in determining an appropriate value include:

- operational impacts,
- regulatory authority requirements (permit criteria),
- continued project management and inspection costs,
- continued design professional construction administration fees.

Caution should be taken to keep the liquidated damages and contract time reasonable because they may influence a contractor’s bid. Liquidated damages often vary from \$1,000 to \$5,000 per calendar day depending upon the items discussed above.

9721.05 CONTRACT TIME

The construction administrator must determine the appropriate contract time to specify for the project. It is important to allow enough time for contractors to perform all of the contract work in a reasonable and efficient manner, or it will affect the bid. If the phases or the whole contract time is unrealistically short or too long in duration, the bid will be affected and may make the project unaffordable.

- An example of contract time that is too short: project scope includes too much to be accomplished in a single summer or other academic break which may require double shift or other acceleration means.
- An example of contract time that is too long: project may require certain types of work to be accomplished only during the summer and over more than one summer. Such a concept must be properly scheduled and estimated or it could result in excessive costs making the project unaffordable.

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The construction administrator should review the estimated construction time with the design professional, as the design professional should have considered time in preparing the estimate for the project. Additionally, review the time against the campus' use of the facility. Often this may result in phased durations or even milestones with specific dates.

Contract time must be reconciled at the completion of the contract. If the time has overrun, then liquidated damages are to be assessed unless the contract time is extended. An extension of contract time is a change to the contract, and a change order is to be used to document the change. The change requires appropriate back-up to document the reason for the time extension.

**9721.06 TEMPORARY OFFICE AND EQUIPMENT FOR PROJECT MANAGER/
CONSTRUCTION INSPECTOR OF RECORD**

The construction administrator shall identify the temporary office and equipment needs of the project manager/inspector of record and or design professional who is administering the project, and also who shall be furnishing them. A Temporary Facilities Checklist can be found in Appendix D.

Historically, the general contractor has been required to furnish temporary facilities for use of the project manager/inspector and/or design professional in addition to temporary facilities for its own use. Such facilities often include office space, desks, chairs, telephones, computer, fax machine, photocopier, plan table, plan racks, etc. Such facilities need to be customized to meet the needs of each individual project. The facilities are usually required to be new or like new, maintained (including paper, ink, toner, batteries, etc.), and include payment of utilities including telephone service, all for project business use only. This has historically been an economical means of meeting this need.

There are alternate means available including campus-furnished space, equipment and utilities, or, the contracting entity furnishing project management and/or inspection could provide their own facilities. This latter means has often resulted in the entity purchasing the needed equipment and requesting reimbursement for its cost. When this occurs, the University has paid for the equipment and must receive its salvage at the completion of the project.

9721.07 ALTERNATIVES

If the project includes alternatives (additive or deductive), the plans and specifications must clearly differentiate base bid requirements from alternatives, and the bid documents must state the basis for award. The base bid should include the major or most significant project work. For projects funded for major capital outlay, alternatives shall stay within ten percent of the estimated cost of the base project and shall be approved by the Department of Finance before inclusion in bid (unless the project is funded under streamline authority, or is non-state funded from donor, auxiliary, foundation or student fees). Prior to bid, all alternatives for all major capital outlay projects will be submitted to CPDC's university planner for review and approval. CPDC's university planner will then seek approval from the Department of Finance, if appropriate. It is recommended that alternatives are significant, distinct, clear and obvious to the University and the bidders, and they must be coordinated with the rest of the bid documents.

Each alternative must be listed in numerical order and shall be described in the specifications and distinguished in the plans separately. The construction budget figure shall also be published. It is very important to maintain integrity in the bid and award of a project. Strict adherence to this procedure will help achieve that integrity, and will avoid or minimize bid protests and legal action.

**9721.07.01 ALTERNATIVES FOR PROJECTS EXCEEDING THE VALUE OF
A MINOR CAPITAL OUTLAY PROJECT**

If the total estimated cost of the project, including alternatives, exceeds the value of a minor capital outlay project pursuant to Public Contract Code section 10108, all provisions of the CSU Contract Law must be followed. Compliance with specific bonding and advertising requirements must be based upon the highest possible total estimated cost of the project (base cost if deductive alternatives are used not or base plus all additive alternatives).

9721.07.02 BID SECURITY WHEN USING ALTERNATIVES

Bid security is required, and must reflect ten percent of the highest total amount bid (i.e., base bid plus all additive or deductive alternatives bid).

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9721.07.03 USING ALTERNATIVES TO DETERMINE LOW BIDDER

Whenever additive or deductive alternatives are included in a bid, the bid documents shall specify which one of the following four methods will be used to determine the lowest bidder. If the method is not specified in the contract documents, then only the first method will be used (Public Contract Code section 10780.5).

- “The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.” This would not likely be a favored choice, but could allow consideration of alternatives to be added or deducted in the award, or post award by change order. Caution: the alternatives bid may not be good competitive values since they were not considered in determining low bidder.
- “The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.” This method allows specifically listing all items that will be considered in determining the low bidder, and does not consider available funding. For example, this could allow specifying that the low bid will be based upon base bid plus all alternatives. That would ensure that all alternatives bid are competitive figures, but you may not have available funding to include all alternatives bid. You may have enough funding for base bid and some (not all) alternatives. The low bidder is determined by base bid plus all alternatives, and may result in someone other than the bidder that is actually low with base bid plus the alternatives that are funded.
- “The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that, when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the Trustees before the first bid is opened.” This method is our historic method of awarding contracts.
- “The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.” This method reasonably could include additive and deductive items taken in any order as long as the identity of all bidders was kept unknown until after the process was complete, and an ascending list of bidders determined.

The statute also specifically provides that the Trustees may add or deduct any alternative items to the contract after the low bidder is determined by one of the four methods. That could be accomplished in the initial award of contract or by change order after award. A time limit, usually sixty days, for adding back in alternatives by change order at the listed price shall be specified on the bid proposal form. Note: once this time limit expires, the bid price for the alternative also expires, unless extended voluntarily by the contractor. If the time limit expires and is not extended voluntarily by the contractor, the cost for this scope of work will be re-calculated according to the change order process.

9721.08 BID ALLOWANCE

Bid allowances are typically included in base bids as estimates for work that will be completed under the base construction contract, but the exact costs are unknown at the time of bid. These amounts are later adjusted to actual costs, once the work is completed. Acceptable allowances include: keying, overtime for campus staff working on utility connections, special utility permits or utility connection fees, and special inspections such as architect/engineer visits to approve special materials or witness special tests. Allowances shall not exceed ten percent of the project’s construction value.

Allowances should be specifically included and listed on the bid proposal form and referred to and defined in Division One (01020) specifications. It is important to include in the division one specifications exactly how mark-ups will apply to allowances whether as work performed or as a credit for non-performed balances of the allowances. This should eliminate claims or disputes regarding application or mark-ups on allowances.

Recommended treatment of mark-ups is as follows:

- Allowances are a part of the base contract work; therefore no additional mark-up is credited to the general contractor for work performed within the allowance by the general contractor or any subcontractor. However for any credited portion of non-performed work, the general contractor shall include mark-up in accordance with the Contract General Conditions change order provisions; and the credit shall be implemented by credit change order.

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- Mark-ups on work performed by subcontractors in accordance with the change order provisions of the contract may be considered as part of the credited costs of performing work within an allowance. No credit mark-up from the subcontractor is appropriate for the balance of the allowance.
- Additional work performed in excess of an allowance is subject to normal mark-ups in accordance with the change order provisions of the contract.

Reference Section 22, Allowance Procedures , Contract Change Order Procedures, found in the Construction Management Procedures Manual, and in Appendix D.

9721.09 PREBID WALKTHROUGHS

Prebid walkthroughs are provided so that the bidders can carefully examine the site and the plans and specifications for the project and investigate and be satisfied as to the conditions to be encountered, the character and quality of surface and subsurface materials or obstacles to be encountered, rights-of-way and easements at or near the site. In attending this walkthrough the bidder covers his obligation to acquaint himself with the existing conditions.

It is CPDC policy that the bidders' attendance at the prebid walkthroughs is not mandatory. CPDC standard bid documents state that it is strongly recommended that the contractor attend the walkthrough, as it may be the only time that bidders can walk through the project area with the design architect/engineer and/or hazardous materials consultant. Problems resulting from mandatory walkthroughs include: bidder protests, accidents or poor health causing bidders to miss the walkthrough, or late publication of advertisement (too late or after date of walkthrough). Any of these problems may result in lack of competition if interested bidders miss the walkthrough. If any of these situations occur, the project may be delayed with re-advertisement and additional walkthroughs.

9721.10 UTILITY CHARGEBACKS

Campuses shall charge back to the contractor the cost for temporary construction electricity, water and natural gas used by buildings prior to their occupancy and acceptance by the CSU, in order to offset the impact to the campus utility budget. The construction administrator may wish to instruct the project architects to specify temporary metering of all utilities by the construction contractors, and to make the contractors financially responsible for all temporary utilities until the date of acceptance. Additionally, campuses should modify the Special Conditions of the contract documents to require the contractors to include as a part of their bid, the cost of all utilities necessary to construct a complete, operational project. Campuses shall then ensure that the invoices for temporary construction meters are in fact charged back to the appropriate construction contractors. Invoice the contractors periodically (monthly or as appropriate) for all utilities used where the contractor was made liable for the utilities by the construction contract.

When the campus does not arrange for the contractors to bid the cost of utilities, the campus energy coordinator shall contact the construction administrator to determine whether the cost of utilities can be charged to the project contingency.

9722 CONTRACT GENERAL CONDITIONS

The Contract General Conditions include all the required provisions of the contract relating to bidding, award, performance of the work, changes, claims and damages, payment, and completion to be in compliance with various applicable codes. They must be incorporated into every public works contract. Contract General Conditions prevail over all sections of the specifications except for specific modifications that may be stated in the Supplementary General Conditions or the Addenda. To maintain consistency throughout the CSU system, when there is a question on the interpretation of the Contract General Conditions, the construction administrator shall consult with CPDC's chief of construction management.

Construction administrators shall check CPDC's website (<http://www.calstate.edu/cpdc/CM/CGC.shtml>) prior to advertising to ensure use of the most recent contract general conditions is included in the Contract Documents. The contract general conditions available on the web are:

- Contract General Conditions for Design-Bid-Build Minor Projects,
- Contract General Conditions for Design-Bid-Build Major Projects,
- Contract General Conditions for Design-Build Major Projects,
- Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects,
- Contract General Conditions for Job Order Contracts, and

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- Auxiliary Design-Bid-Build (Major Capital Outlay) Projects.

Identified in the Contract General Conditions are the roles of various professionals, i.e. design professional, inspector, project manager, and construction administrator. For delegated public works projects, the campus shall appoint appropriate parties to fill these roles; for example, the role of construction administrator should be filled by someone who is authorized to certify construction progress, approve change orders and payments, resolve disputes, and perform other administrative duties as required by the numerous public works statutes.

9722.01 SUPPLEMENTARY GENERAL CONDITIONS

Contract General Conditions are modified only by Supplementary General Conditions (SGC). Whenever it is necessary to amend the Contract General Conditions with SGC, remember that all SGC shall be reviewed and approved by an attorney in the Office of General Counsel. It will not be necessary for the campus to draft an SGC to replace the name of the campus for the Trustees as the contracting party. The Trustees are always the contracting party whether the contract is issued by the campus or by CPDC in the chancellor's office. The SGC is also a means of modifying and customizing the Contract General Conditions, when appropriate, for a specific project.

SGC that are initiated by CPDC, complement or supersede the Contract General Conditions as appropriate, and are available on the web, (<http://www.calstate.edu/cpdc/CM/CGC.shtml>). Those SGC that are found on the CPDC web site have already been reviewed and approved by General Counsel. Construction administrators shall check this web site prior to advertising to ensure use of the most recent version is included in the Contract Documents.

9722.02 SPECIAL CONDITIONS

The Special Conditions include provisions tailored to meet local campus needs, e.g., utilities to be included in base bid, issuing keys, traffic and parking control. These complement, but do not supersede the Contract General Conditions. They should always be customized to the campus and be project-specific. This can be a section called "Special Conditions" or the contents can be included in Division One (Section 01000), and this includes additional requirements customized to the project and is usually authored by the design professional.

9722.03 SAMPLE FORMS

The Contract General Conditions for all types of contracts, SUAM-Appendix D, and the Project Administration Reference Manual all contain various sample forms designed for project administration. The sample forms have been created in a generic format, and are intended to be customized, as appropriate, to modify signature blocks, titles, etc. The sample forms are the recommended format, and some forms contain important requirements such as the agreement and the bond forms, but most may be modified if needed. The [sample forms](http://www.calstate.edu/cpdc/cm/forms) can be found on the following website: www.calstate.edu/cpdc/cm/forms. For each form listed therein, we have indicated which document it would belong to, i.e. SUAM Appendix D or Contract General Conditions for Design-Bid-Build Major Projects. Campus administrators are encouraged to review changes to forms with Construction Management, in CPDC, whenever proposing to make major format or text changes.

9723 ADVERTISING FOR BIDS

The construction administrator is responsible for placing advertisements soliciting bids in appropriate trade papers and newspapers in accordance with the provisions of the contract laws that apply to CSU. To allow contractors sufficient time for the preparation of bids, there must be a reasonable length of time between the publication of the advertisement and the date for submission of bids, preferably four weeks minimum. Therefore, advertisements for bids are placed approximately four weeks prior to the bid opening date and two weeks prior to the job site inspection of the project; the bid openings normally are held on Tuesday, Wednesday or Thursday. An advertisement can be placed in the California State Contracts Register (CSCR), which is found on the eProcurement portal managed by the Procurement Division of the Department of General Services (web address: <https://www.bidsync.com/bidsync-cas/login?service=https%3A%2F%2Fwww.bidsync.com%2FDPXLogin>). Document approvals for exemption from publication in the CSCR on Std. Form 821, Request for Exemption from Contract Advertising (Public Contract Code sections 10740 and 10742, and Government Code section 14825 *et seq.*)

9723.01 ADVERTISING PUBLIC WORKS PROJECTS ESTIMATED TO COST LESS THAN \$15,000

The campus may advertise all public works projects estimated to cost less than \$15,000. For these projects, compliance may (but need not) be through advertising (a) once a week for at least two consecutive weeks in one trade paper of general circulation published in San Francisco or in Los Angeles and (b) once a week for at least two

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consecutive weeks in one newspaper of general circulation in the county where the project is located (Public Contract Code section 10740). Refer also to SUAM section 9723.03.

9723.02 ADVERTISING PUBLIC WORKS PROJECTS ESTIMATED TO COST \$15,000 OR MORE

If the estimated cost of the project is \$15,000 or more, the construction administrator must advertise for at least two consecutive weeks in (a) two trade papers of general circulation, one published in Los Angeles and one published in San Francisco, or (b) in one newspaper of general circulation published in the county in which the campus is located and in one trade paper published in Los Angeles or San Francisco (Public Contract Code section 10742). It is also recommended that an ad be placed once in a journal targeting DVBEs. The advertisements should include these items:

1. a brief description of the project;
2. the date and time of the bid opening;
3. a statement that copies of the prevailing wage rates are on file at the campus;
4. a statement that the contract is subject to DVBE requirements, state nondiscrimination and compliance requirements, and prequalification requirements (if applicable);
5. the requirement for a bid security, payment bond, and performance bond (if applicable);
6. the classification of license(s) required on the project;
7. the date(s) and time(s) for the job site inspection (and whether it is mandatory);
8. the name and telephone number for the contact person for plan distribution and questions.

It is not necessary to publish the entire Notice to Contractors. In order to reduce the costs of advertising, advertisements shall be as brief as possible. Refer also to SUAM section 9723.03.

**9723.03 ADVERTISING PUBLIC WORKS PROJECTS ESTIMATED TO COST LESS THAN
THE VALUE OF A MINOR CAPITAL OUTLAY PROJECT**

In accordance with Public Contract Code section 10705, if the project is estimated to cost less than the value of a minor capital outlay project pursuant to Public Contract Code section 10108, some discretion may be exercised with the advertising requirements of a project; however, refer to SUAM sections 9723.01 and 9723.02 for normal procedures.

9730 CAMPUS'S DUTIES AND RESPONSIBILITIES DURING BIDDING PHASE

1. Coordinate delivery of the project plans, specifications, and bidding documents to the designated distribution location, and ensure both the plans and the specifications are numbered consecutively.
2. Make all arrangements required to accommodate the prebid walkthrough.
3. Ensure that a record is kept of all plans and specifications issued, by number of bid set and name of contractor receiving that bid set, as well as contractor address, phone and fax numbers.
4. Ensure that deposits from bidders withdrawing plans are obtained.
5. Notify the construction administrator if additional sets of plans are needed for bidders.
6. Periodically throughout the bidding period, furnish the construction administrator and the design professional with the names of all contractors who have withdrawn plans.
7. Ensure that all addenda issued are attached to the plans and specifications on hand and that copies are mailed to all plan holders.
8. If applicable, return deposits to all plan holders who return plans within the time stipulated and return the balance to the construction administrator to deposit with the project funds in order to defray printing costs.
9. Ensure that copies of the plans and specifications are placed in the plan rooms selected during the prebid meeting.
10. Direct all questions regarding the project and the bidding procedures to the design professional.
11. Issue bid packages to prequalified bidders. To ensure bidders are prequalified, construction administrator must verify license, prequalification expiration date and prequalification rating, by either requiring contractors to submit a copy of the prequalification letter given them by the prequalification coordinator, or, by requesting prequalification status from prequalification coordinator.
12. Handle all public information releases concerning the project through appropriate campus channels.
13. Inform campus staff of the project and the conduct required of them during the construction period.
14. Make all arrangements required to accommodate the construction.
15. Advise the students of their responsibilities during the construction period.

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16. Prepare and conduct the formal bid opening at the campus. Accurately record all bids received on the official Abstract of Bids form. Fax bid results to CPDC.

9730.01 DISTRIBUTION OF PROJECT PLANS AND SPECIFICATIONS TO BIDDERS

It is recommended that the Business Office of the project campus coordinate the issuance of the project plans and specifications to the prospective bidders, whether distribution is done at the campus or by other means, i.e. printer, design professional, etc. It is further recommended that one person at the campus be designated to control the distribution of these documents and serve as the campus contact with the construction administrator. The information where the plans and specifications will be available is always called out in the advertisement for bids. These documents must be issued from that location.

The plans and specifications should be at the designated distribution location ready for distribution, by the day the first advertisement for bids is placed. As a service to contractors who have not prequalified, the prequalification forms may be given to any contractor requesting them when acquiring project plans and specifications. These prequalification forms must be sent directly to CPDC Construction Management for evaluation (see SUAM section 9740 *et seq.*).

9730.02 PLAN DISTRIBUTION RECORD

The campus shall ensure that the project plans and specifications are numbered sequentially and issued as sets, the number of each set of plans agreeing with that of the specifications. For all sets issued, a written record must be kept, containing the following information:

- name, address, telephone number, and facsimile number of bidder making withdrawal,
- the number that is on the plan and the specifications (these must agree),
- the amount of the deposit,
- the date of issue.

It is necessary that this information for plan holders be continually updated and current throughout the bidding period, so that copies of all addenda issued may be forwarded to all bidders accordingly.

9730.03 PLAN DEPOSITS

A plan deposit must accompany requests for plans and specifications. A refundable deposit in an amount stated in the Notice to Contractors may be charged for each set of plans and specifications. Prime contractors are allowed refunds for a maximum of two (2) sets each; subcontractors, one (1) set each. Additional sets of plans and specifications may be purchased. No refund will be made for any additional sets purchased. Deposits will be returned if the plans and specifications are returned within 30 calendar days of bid opening in good condition and unmarked. Marked-up drawings, missing sheets and unbound specifications are sufficient reasons for forfeiture of deposits.

Generally, plan rooms in the vicinity of the campus are furnished with a set of plans and specifications. Since it is to the advantage of the Trustees to have plans on file in such places for the use of subcontractors, requests for copies without a plan deposit for plan rooms usually are approved.

For minor capital outlay projects or small major capital outlay projects where the cost of plans and specifications is relatively modest, the plans and specifications may be distributed to bidders by allowing all documents to be purchased. The cost should be set at the approximate actual cost to reproduce the documents. Campuses must still furnish the minimum number of sets of plans and specifications to the contractor for construction in accordance with SUAM section 9730.04 and with the Contract General Conditions.

9730.04 DISPOSITION OF PLAN DEPOSITS AND REMAINING SETS OF PLANS AND SPECIFICATIONS

Any plan deposits on hand thirty calendar days after the bid date must be forwarded to the construction administrator. The funds from these deposits are to be used only for defraying the advertising and printing costs of the project. Upon award of a contract, sets of plans and specifications will be given to the successful bidder at no charge in accordance with the following schedule and as required by the Contract General Conditions:

<u>Project Bid Cost</u>	<u>Number of Sets of Plans Given the Contractor</u>
Up to \$634,000	15 Maximum
\$634,000 to \$1,000,000	20 Maximum
\$1,000,000 and over	24 Maximum

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The contractor may purchase plans and specifications in excess of these stated numbers from the design professional at cost. The bidder awarded the contract may be furnished the available excess remaining sets of plans and specifications (if any) at no cost. Also refund the plan deposits of the successful bidder without return of plans.

Subcontractors who have withdrawn plans and who are listed by the prime contractor who was awarded the contract must return their plans to secure their plan deposits unless the prime contractor authorizes the listed subcontractor to retain its set as though from them. Otherwise, all subcontractors must secure any plans they need in their work from the prime contractor.

9731 DESIGN PROFESSIONAL'S DUTIES AND RESPONSIBILITIES DURING BIDDING PHASE

- Reproduce the plans and specifications (a reimbursed expense in the design professional's agreement) and ensuring delivery to the campus (unless the campus assumes this responsibility).
- Answer all questions from bidders relative to the project in an appropriate manner.
- Review submitted "or equals" per Section 3400 of the Public Contract Code.
- Issue all addenda, after approval by the construction administrator.
- Attend the formal bid opening.
- Evaluate any bid overrun.
- Submit a complete list of all tests that are required in accordance with the specifications.

9731.01 PREPARATION AND CONTENTS OF BIDDING DOCUMENTS

The construction administrator must instruct the design professional in writing to prepare the bidding documents. The bidding documents must contain complete and accurate plans and specifications, with directions that would enable any competent builder to carry them out (see Public Contract Code section 10720). Bind the following material into the volume containing the specifications:

1. cover and title page, prepared by the design professional, specifying campus, project name and number;
2. a general index of the volume, prepared by the design professional;
3. the Notice to Contractors, prepared by the construction administrator, specifying the date, time and location of the bid opening, description of the work, notice of the requirement for a bidder's bond or bid security (and a payment bond and performance bond, if applicable), the required license classification, prequalification requirement, DVBE requirement, the prevailing wage rate requirements, and job site inspection information;
4. the proposal form with "sample" overlay, prepared by the construction administrator, specifying construction budget, duration of project, liquidated damages, license requirement, bidder's security requirements;
5. the Contract General Conditions, furnished by the construction administrator, which includes samples of the following: bidders bond, agreement, performance bond, payment bond, and guarantee. Construction administrators shall check this web site (<http://www.calstate.edu/cpdc/CM/CGC.shtml>) prior to advertising to ensure use of the most recent version of the Contract General Conditions (and item no. 6 below, Supplementary General Conditions) is included in the Contract Documents.
6. Supplementary General Conditions, furnished by the construction administrator;
7. Supplementary General Conditions for Federally-Funded Projects;
8. federal forms, furnished by the construction administrator, for projects with federal grants, interest subsidies, or loans, if required;
9. federal program guidelines, furnished by the construction administrator, if required;
10. section 01000 general requirements (Division One), prepared by the design professional and approved by the construction administrator;
11. technical specifications, prepared by the design professional;
12. project plans, prepared by the design professional.

9731.02 PRINTING AND REPRODUCTION OF PROJECT PLANS AND SPECIFICATIONS

The design professional is usually responsible for having the project plans produced and the project specifications printed and collated. Depending upon the type and size of the project and its location, it generally is recommended that between fifty and one hundred copies of the plans and specifications be printed initially. The design professional shall seek informal bids for this process and select the most economically responsive bid. The design professional shall be reimbursed for all plans and specifications that are required to be furnished beyond the number stipulated in the agreement.

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Specifications should be printed on both sides of 8 1/2 x 11-inch sheets and bound on the left into book format. Contract General Conditions and other legal requirements must be included in the volume of specifications, and the construction administrator furnishes these documents. The design professional will retain adequate sets of plans and specifications for his or her use and deliver one set to the construction administrator. All other sets are to be delivered to the person designated to distribute bid documents. If federal funds are involved, one additional set must be delivered to the construction administrator for forwarding to the appropriate federal agency.

9731.03 ELECTRONIC BID DOCUMENTS

Bid documents may be distributed electronically or posted to a public online server for contractors to download, after paying a fee for the documents.

9740 SYSTEMWIDE PREQUALIFICATION OF BIDDERS FOR CONSTRUCTION CONTRACTS-- RESPONSIBILITIES

CPDC, Construction Management is responsible for prequalifying prospective bidders and provides this service to the CSU system. The construction administrator shall notify CPDC's prequalification coordinator that the project is bidding and shall provide the prequalification coordinator with the following information regarding the project: project name, bid date, estimated bid cost, and whether any special requirements must be met prior to issuance of a bid package. A copy of the Notice to Contractors may be e-mailed (to cocm.prequal@calstate.edu) or faxed to the prequalification coordinator to facilitate the process of prequalification.

9740.01 SUPPLEMENTAL PREQUALIFICATION REQUIREMENTS

Occasionally special prequalification requirements may be required in addition to the standard prequalification criteria. This supplemental requirement may be used to identify specific experience that the prime contractor must have to be eligible to bid the project. For example, one may require each contractor to have successfully completed one or more similar size and complexity project(s) within some recent time period, such as five years.

Supplemental prequalification requirements shall be identified in the Notice to Contractors and expanded upon in Division One. Caution should be used in implementing restrictive requirements because it will eliminate some competition and may result in too few bidders. Statutes intend to promote competition. Campuses shall send a copy of the supplemental prequalification form to the CPDC's prequalification coordinator for review prior to its implementation for the bid.

9740.02 SUBCONTRACTOR PREQUALIFICATION

Campuses may request prequalification of the major subcontractors for a large, complicated project: specifically mechanical, electrical and plumbing subcontractors, and possibly other specialty subcontractors as the needs of the project dictate, i.e. food services, swimming pools, etc. CPDC's prequalification coordinator will perform the subcontractor prequalification, and it shall be project specific. Subcontractor prequalification documents are available in Appendix D, and campuses may download them and customize them for a particular project. A menu of experience requirements is included in these forms to assist the campuses in drafting the document. Campuses shall consult with CPDC's chief of construction management on this decision, and shall e-mail or fax the prequalification form to CPDC's prequalification coordinator prior to the advertisement for this requirement, along with the name of the project administrator, to whom she can send a copy of the prequalification letter. The prequalification letter shall state whether or not the subcontractor has met the requirements for prequalification for the specific project.

Note that when implementing a subcontractor prequalification, the campuses must advertise this requirement. When drafting the prequalification requirement in their specifications, campuses should identify the particular trades for which prequalification will be required, and a subcontractor prequalification submittal deadline. Campuses shall also specify that the prequalified subcontractors will be listed in an addendum, and if the subcontractor is not included in that addendum, then that subcontractor may not submit a bid.

9740.03 SUBCONTRACTOR PREQUALIFICATION FOR DESIGN-BUILD AND CM AT RISK PROJECTS

Prequalification of major subcontractors is a requirement for all Design-Build and CM at Risk projects. The Design-Builder or CM at Risk is to prequalify all of its major trade contractors (mechanical, electrical, plumbing, or any trade that is greater than five percent of the construction budget). Sample forms are available online for the Design-Builder or CM at Risk to use, or they may use their own forms as long as they incorporate the Trustees' requirements

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into their documents. The forms shall be included in the Request for Proposal document, and campuses shall ensure that the Design-Builder or CM at Risk is performing this process by requesting the following documentation for the project file.

- A report on the prequalification process for the project identifying how the subcontractor prequalification was implemented in the contract documents, confirm that the Design-Builder or CM at Risk incorporated the CSU trade prequalification format into their own prequalification documents, and provide results, i.e. how many contractors in each trade were prequalified, etc.
- A copy of the Supplementary General Conditions or RFP wherein the campus required that the Design-Builder or CM at Risk perform the prequalification using the CSU Trade Prequalification document.
- A copy of the Design-Builder or CM at Risk prequalification document.
- A copy of each contractor's submitted prequalification document.

9741 BIDDER (GENERAL CONTRACTOR) PREQUALIFICATION REQUIREMENTS

Prequalification of bidders is required on all major capital outlay projects (projects for which estimated construction costs exceed the value of a minor capital outlay project pursuant to the first paragraph of Public Contract Code section 10108). Prequalification of bidders is optional for minor capital outlay projects. The Trustees shall not issue standard bid proposal forms to bidders until the bidders have been prequalified, and shall disregard bids not presented on standard bid proposal forms.

As required by Public Contract Code section 10760 *et seq.* prospective bidders (general contractors) must submit a completed Prequalification of Prospective Bidders (Form 703.11, in Appendix D) and a comprehensive statement of their financial ability and experience in performing public works at least ten business days prior to the date fixed for publicly opening sealed bids and be prequalified at least one day prior to the bid opening date. Upon receipt of the applications for prequalification, the CPDC's prequalification coordinator then applies a uniform system of rating bidders to determine the size of projects upon which each is qualified to bid.

Completed questionnaires and financial statements are confidential and not open to public inspection.

9742 FORMULA IN CALCULATING THE PREQUALIFICATION RATING

Maximum prequalification ratings by the Trustees are based on ten times working capital, subject to adjustment for experience and performance factors. Particular attention is called to the requirement that the certification by the public accountant must express an unqualified opinion, or, a qualified opinion that does not negate an opinion on the statements as a whole, in order to receive a "ten times working capital" prequalification.

CPDC's prequalification coordinator will issue a letter to the bidder that provides a prequalification rating. The prequalification rating provided will be the maximum amount of a contract or contracts that the bidder may undertake with the Trustees. The construction administrator shall disregard any bid received either from a bidder that is not currently prequalified, or from a bidder that is prequalified but the rating is not high enough to accommodate its bid. Note that for job order contracts only, the bidder's available prequalification rating shall be not less than the maximum amount of the job order contract.

9743 TIME LIMIT ON PREQUALIFICATION STATEMENTS

A contractor's prequalification statements are valid until the financial information shown on them is fifteen months old. This allows a firm three months to resubmit following the effective date on its annual financial statement and to maintain continuous prequalification.

A current submittal is required each year. In addition, the prequalification coordinator may specifically request a new statement after six months have elapsed, in which case the contractor must comply within thirty days, or the rating on file may, at the discretion of the prequalification coordinator, be considered to have expired. A contractor also may file new statements at more frequent intervals. If a substantial change has occurred in the contractor's financial status, a new rating based on the latest statement will be issued. All files more than three years old may be destroyed.

9744 CERTIFICATION REQUIRED FOR BIDDER PREQUALIFICATION

The correct certification for the type of firm (page 10 of Form 703.11) must be executed in its entirety.

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9745 REVISION OR TERMINATION OF PREQUALIFICATION

A prospective bidder, prequalified by CPDC, may have the prequalification limited, suspended, deferred, or rescinded by CPDC, prior to expiration of the time period specified in the prequalification after provision of notice of the proposed action to the prospective bidder and an opportunity for a hearing.

The opportunity to be heard shall be an informal process conducted by an individual appointed by the CSU's executive vice chancellor/chief financial officer. At the hearing the proposed action and reasons therefor shall be presented and an opportunity given the prospective bidder to ask questions, submit information, and present reasons in opposition to the proposed action. A decision concerning prequalification of the prospective bidder shall be rendered by the individual appointed to conduct the hearing, and shall be mailed to the prospective bidder within ten calendar days of the conclusion of the hearing. Also reference SUAM section 9835, "Evaluation of Contractor Performance."

9746 BID PROPOSAL PACKAGE

Shortly after the first advertisement has been placed, the construction administrator will send by mail or electronically bid proposal packages to the prequalified bidders who request them, or the construction administrator may make electronic bid proposal packages available on a public online server for contractors to download. To confirm bidders' prequalification status, the construction administrator shall require the bidders to submit their letters of prequalification in order to receive a bid package. If bid packages are available on a public online server, the construction administrator shall, on the day of the bid opening, confirm the contractors' prequalification status as of the day before the bid opening and block any company not prequalified from bidding. To be considered, a bid must be submitted on the official proposal form prepared and issued by the construction administrator.

For those projects for which public bidding shall occur online, Public Contract Code section 10765 states that the bidders bid security of the two lowest bidders must be submitted within 24 hours of bid opening to the office designated in the bid proposal documents.

9747 ADDENDA DURING BIDDING

The design professional is the only person who may answer technical questions from bidders or other interested parties during the bidding period for major capital outlay projects. The construction administrator must direct all design-related questions concerning the project, other than those relative to withdrawing plans, to the design professional. If, as a result of these questions and the design professional's review of the plans, clarification or additional information is thought desirable, the design professional must then contact the construction administrator for authorization to prepare and issue an addendum to the plans and specifications. Once the design professional has drafted the addendum, the construction administrator must then review the contents of the addendum carefully, since it supersedes all other contract documents including the Contract General Conditions. Any addendum requested by the various campus entities also must be cleared with the construction administrator before it is issued. The design professional is responsible for timely furnishing copies of all addenda to the designated distribution location for mailing to all bidders and for attachment to any remaining plans and specifications.

Public Contract Code section 4104.5 requires that the agency taking bids does not issue an addendum less than 72 hours before opening if the addendum has material changes, additions or deletions to the scope. CPDC policy is that no addendum should be issued during the five calendar days immediately preceding the date on which bids are to be received unless a time extension is included for the date of receiving bids.

Addenda may be distributed electronically or posted to a public online server for contractors to download. If publicly posted, the construction administrator shall still contact contractors to advise them that the addendum has been posted.

9750 BID OPENING PROCEDURES

It is recommended that the bid opening procedures outlined in the following sections be used for all public works projects advertised by the Trustees.

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9751 LOCATION OF BID OPENING

The bid opening is held at the campus, preferably under the auspices of the campus official responsible for business affairs. It is recommended that the bid opening be held in the Administration Building, near the room where plans were issued during the bidding period. A room large enough to hold twenty seated persons may be required. It must contain a table or counter at one end and an official clock (a telephone is also preferred).

9752 TIME AND DATE OF BID OPENING

It is recommended that openings be scheduled for 2:00 p.m. on a Tuesday, Wednesday or Thursday. For best results, no bid opening should be scheduled on the day before or the day after a holiday.

9753 PREPARATION FOR BID OPENING

It is recommended that campus officials place signs directing bidders to parking as well as to the bid opening room on the morning of the day the bid opening is scheduled. Approximately ten parking spaces (or at least as many as the number of bid packages distributed) should be made available, and a member of the campus security force should be at the parking area to direct last-minute arrivals. The bid opening room should be open to bidders approximately one and a half hours before bid opening.

9754 RESPONSIBILITIES AND DUTIES OF PERSONNEL CONDUCTING BID OPENING

Three persons are needed to conduct the bid opening: one to serve as monitor, one to serve as the bid announcer, and one to serve as recorder. The monitor and announcer must be at the bid-receiving table from the time the bid room is opened (one and a half hours before the bid opening is scheduled) until the room is cleared at the close of the question period following the bid opening.

Bids received by mail are brought into the bid room by the monitor, who places them on the bid table but retains custody of them until they are opened. The announcer, who presides over the bid opening, receives all bids submitted at the bid room and places them in the custody of the monitor until bid opening.

9755 TIMING OF BID ACCEPTANCE

Ten minutes before the scheduled bid opening, the person who will serve as recorder must make a telephone check on the official clock and adjust it if it is not accurate. It is recommended that the recorder then announce the time at intervals until the scheduled bid opening time is reached. A speaker telephone is an excellent way of accurately announcing the correct time. When the time scheduled for the opening of the bids is reached, the recorder must inform the announcer. The announcer is responsible for signaling the end of the bid acceptance period promptly with a bell or gavel (or by telephone time on speaker phone) and announcing:

"The period for accepting proposals by the Trustees of the California State University for the work of Project Number (state project number and name) is closed in accordance with Section 10766 of the Public Contract Code. Bids will now be publicly opened and read."

It is mandatory that no bids be accepted after the specified time, which shall be signified by an audible signal. A bid accepted after this signal could result in protest by a bidder, which may lead to rejection of all bids submitted. Any bid received after the time specified in the Notice to Contractors or in any addendum shall be returned to the bidder unopened (Public Contract Code sections 4104.5 and 10766).

9756 WITHDRAWAL OF BIDS PRIOR TO BID OPENING

A bid may be withdrawn prior to bid opening by submittal of a letter of withdrawal to the bid announcer (Public Contract Code section 10767). The bid announcer must make sure, by direct question that it is a bid withdrawal letter, and the monitor must confirm this. The monitor must then open, read, and staple the letter to the bid that is to be withdrawn. This bid must be set aside, to be returned to the bidder unopened.

9760 OPENING OF BIDS

The persons in charge of the bid opening are expected to work deliberately, taking the time necessary to check all the bids carefully. Bids that have letters of withdrawal attached must be set aside and returned to the bidders later by the construction administrator. They must not be opened. The actual bid opening must adhere to the following procedure.

- The monitor opens one envelope and hands it to the bid announcer, who extracts the bid from the envelope, reads the bidder's name and address, and states whether or not a bid security is attached, if subcontractors

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are listed, if a small business five percent bid advantage is being claimed, and if bidder qualifies as a California company.

- The announcer states the amount of the base bid, and also any alternatives or unit prices listed.
- The recorder enters this information on the official Abstract of Bids form.
- The announcer returns the opened bid to the monitor, who staples all bid papers to the envelope in which they were enclosed and stacks them apart from unopened or withdrawn bids.
- Repeat the procedure until all responsive bids have been read and tabulated. The announcer then reports the number of bids that have withdrawal requests, but gives no other information concerning them.
- The announcer states the name of the apparent low bidder, or if not possible to do so, the announcer shall state that the tabulation of bids will be checked and Small Business and DVBE participation will be verified before the actual low bidder can be announced. The announcer will provide a time and manner in which the bid results will be made public (must occur within 24 hours).
- The recorder signs the Abstract of Bids form, certifying that it is a true tabulation of bids received.

9761 SMALL BUSINESSES AND DISABLED VETERAN BUSINESS ENTERPRISES

9761.01 SMALL BUSINESS FIVE PERCENT BID ADVANTAGE

If a bidder who is certified as a small business by the Office of Small Business & DVBE Certification (OSDC) requests the five percent bid advantage for small businesses and has enclosed a fully executed copy of Std. Form 811 with the bid, that bidder will be given a five percent preference up to a maximum of \$50,000, in accordance with the Government Code section 14838. The application of the five percent small business bidding preference is also extended to any non-small business that commits to subcontracting at least 25% of its net bid price to California certified small businesses and/or microbusinesses. Please refer to the California Code of Regulations, Title 2 section 1896 *et seq.* for further information. Note that since job order contracts are indefinite in quantity, the non-small business (that requests the five percent small business bid advantage and commits to subcontracting at least 25% of its net bid price to California certified small businesses and/or microbusinesses) must demonstrate that 25% of its listed subs on each job order proposal are small businesses. If the contractor, in subcontracting to small businesses, meets or exceeds the 25% of the maximum overall contract amount before the expiration of the contract term, the Trustees may waive this listing requirement for subsequent job orders.

9761.02 DISABLED VETERAN BUSINESS ENTERPRISES PARTICIPATION REQUIREMENT/INCENTIVE

All bidders, in providing a bid to the Trustees, shall achieve the mandatory three percent DVBE participation requirement, and this is accomplished by a bidder who is certified as a Disabled Veteran Business Enterprise (DVBE) by the Office of Small Business & DVBE Certification (OSDC) or who commits to use DVBEs for not less than three percent of the dollar amount of the contract. Refer to Contract General Conditions for contract requirements.

Bidders who exceed three percent DVBE participation may qualify for a bid incentive. Incentive requirements and the basis of award shall be fully detailed and included in the supplementary general conditions for each project.

At the end of project, the contractor is required to certify DVBE participation on the contract, see SUAM section 9834.02.

Go to the Office of Small Business & DVBE Certification web site for more information. Links are available there for the California Code of Regulations, Title 2.

9762 CALIFORNIA COMPANY RECIPROCAL PREFERENCE

When awarding contracts for construction, the Trustees are required to grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

Each bidder shall certify at the time of bid that the bidder qualifies as a "California company," as stipulated in Public Contract Code section 6107. If the bidder does not qualify as a California company, then it shall indicate the name of

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the state in which its principal place of business is located, and the amount of the local contractor preference in that state. Please reference Form No. 701.08, Certificate of Appropriate License and California Company.

9763 CLOSURE OF BIDDING PROCEDURE

After the bids have been checked privately, the announcer again makes an audible signal with the bell or gavel and announces the name, address, and bid price and list of subcontractors of the apparent low bidder, and reminds the bidders of the need to submit all required DVBE forms and the List of Subcontractors - Additional Information within 24 hours. The announcer will inform the bidders when the final tabulation of bids will be posted or available, and then formally closes the bidding procedure with the statement:

"The receiving of bids for project number (state project number and name) is closed. The bids submitted will be taken under advisement, and the Trustees will either award a contract to the lowest responsible bidder or reject all bids within the time stated in the documents."

9764 QUESTION PERIOD

A question period follows the formal close of the bid opening procedure. Only the announcer may receive or answer questions. However, he or she may consult with the others conducting the bid opening. The announcer may answer questions on the following subjects:

- the bid amount of any proposal opened,
- the list of subcontractors submitted by any bidder whose bid was opened,
- the form of bid security offered by any bidder whose bid was opened;
- the announced bidders who have certified as a small business on Std. Form 811,
- the announced bidders who are claiming the DVBE incentive, if any,
- the announced bidders who are qualified California companies who have certified as such on the Certificate of Appropriate License and a California Company form.

Questions that go beyond these subjects should be parried with a statement that the question is irrelevant to the bid opening and should be submitted in writing to the construction administrator.

9765 DISPOSITION OF BIDS

The bid room should be cleared as quickly as possible at the close of the question period and the bids delivered to the construction administrator. It is recommended that the campus retain a copy of the apparent low bidder's submission, since subcontractors will call for information on those listed by the low bidder for various items of work. Clearing the bid room helps prevent "sour grapes" bid protests by not allowing a forum for discussing minor irregularities or any other conversation regarding the bids following the public opening. Such analysis can be private, involving only staff and the design professional. Construction administrator shall fax the Abstract of Bids form to CPDC (distribution: university planner and prequalification coordinator).

9770 MISTAKE IN BID

After the bids have been opened, a bidder shall not be relieved of its bid without the consent of the construction administrator, nor may any change in the bid be made because of a mistake. If the construction administrator has not relieved the bidder because of a mistake in bid, and if the bidder fails or refuses to execute an agreement within the time specified, the bidder must forfeit its bid security. The bidder may bring an action in a court of competent jurisdiction in the county where the bids were opened for recovery of the amount forfeited, without interest or costs (Public Contract Code section 5101).

9770.01 GROUNDS FOR RELIEF OF BID

The construction administrator may allow a bidder to withdraw a bid because of a mistake when the bidder has notified the construction administrator in writing within five calendar days of the bid opening and has established to the satisfaction of the construction administrator that all the following conditions apply.

- A mistake was made.
- The mistake made the bid materially different from what the bidder intended.
- The mistake was made in filling out the bid and was not due to an error in judgment, nor to carelessness in inspecting the site, nor in reading the plans or specifications.

If the construction administrator consents to relieve a bidder of a bid because of a mistake, the construction administrator must prepare a report for the Trustees' files within ten calendar days of such action. The report must document the grounds for relief (see conditions listed above) and must be available for public inspection (Public

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Contract Code sections 5101 (b) and 5103).

9770.02 PROHIBITION AGAINST FURTHER BIDDING ON PROJECT

A bidder who claims a mistake or forfeits its bid security shall be prohibited from further bidding on the project on which the mistake was claimed or security forfeited (Public Contract Code section 5105). If the project is subsequently rebid, the bidder must not be allowed to participate.

9771 WAIVER OF IRREGULARITIES

The Contract General Conditions provide that proposals may be rejected if they show alterations of form, additions not called for, conditional or incomplete bids, erasures, or irregularities of any kind. However, the Contract General Conditions also provide that the construction administrator reserves the right to waive any minor irregularities.

Although there are no precise criteria to determine when an irregularity should be waived, generally, irregularities that are substantive and that materially affect the outcome of the bid shall not be waived. An irregularity is not minor if it affects the capacity of the bidder, the integrity of the bid process, or the quality of the proposed performance. In addition, if a bidder submits more than one bid proposal form on a single public works project, the lowest bid will be used.

9772 TIE BIDS

In the rare case of a tie for the lowest responsible bid, the construction administrator may either reject all bids or award the contract following a coin flip procedure agreed to in writing by the tied bidders.

In the event of a precise tie between the bid of a small business and the bid of a disabled veteran business enterprise that is also a small business, the award shall go to the disabled veteran business enterprise that is also a small business.

9773 REJECTION OF BIDS/REBID

Projects for which all bids are rejected because all bids exceeded the available funds may not be rebid until the plans and specifications have been reevaluated and modified. The modification must be such that the scope is preserved, but the estimated cost of construction is brought within the funds that may be made available.

Occasionally a bid ambiguity causes confusion in the bid process resulting in the need to reject all bids, correct the ambiguity, and immediately rebid. When deemed appropriate, an addendum and revised bid proposal form is then issued to all original bidders, and the project is rebid in approximately one week. Such process is not to be abused by making major changes to the documents and then offer bidding to a short-listed group of contractors without re-advertising. It is the intent of state statutes to advertise and seek competitive bids. Delay in a rebid alone is grounds to re-advertise because it may attract competition that did not bid the first time. Also refer to SUAM section 9770.02.

9774 EVALUATION OF BIDS AND AWARD OF CONTRACT

All bids received must be evaluated carefully. Ensure that all bids are signed. Bids that are not signed shall be considered nonresponsive. The construction administrator shall disregard any bid received either from a bidder that is not currently prequalified or from a bidder that is prequalified but the rating is not high enough to accommodate its bid. See SUAM section 9740 *et seq.* The construction administrator shall declare any conditional bid received nonresponsive.

The Disabled Veterans Business Enterprise (DVBE) requirements of the contract will be evaluated by the DVBE coordinator. A written evaluation statement showing compliance with the DVBE requirements in the contract and statutes will be made prior to any further action to seek approval to award. The remaining contents of the bid proposal package shall be reviewed for compliance with contract and statutory requirements including bidders bond, subcontractor listing, signature authority, California Company, and pocket license.

Bidders bonds must be executed by an admitted surety insurer. The Construction Administrator shall verify the status of the party executing the bond in one of the following ways: 1) printing out information from the Department of Insurance web site, <http://interactive.web.insurance.ca.gov/companyprofile/companyprofile>, confirming the surety is

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an admitted surety insurer and attaching it to the bond; or 2) by obtaining a certificate from the county clerk that confirms the surety is an admitted insurer and attaching it to the bond (see Code of Civil Procedure, Section 995.311).

The List of Proposed Subcontractors shall be submitted with the bid on each project. If the project is a design-build project, the proposer is not obligated to submit a List of Proposed Subcontractors with its bid, but rather, as soon as subcontractors are selected. Once the subcontractors are selected, the design-builder shall add their names to the List of Subcontractors - Additional Information and submit it to the construction administrator. Note: at start of construction of the design-build project, the construction administrator shall request that the design-builder submit a Subcontractor Directory to ensure that the Trustees have a complete listing of first-tier subcontractors.

State-funded projects for which all bids are over the Trustees' filed estimate or have been bid with a recognized deficit may require Public Works Board augmentation of the project appropriation before any proposal is accepted. When necessary, CPDC must initiate the augmentation request and perform the duties necessary to accomplish it. If the time required exceeds the time allowed in the documents, the construction administrator must request written guarantees from the contractor and the contractor's surety that the bid price will be held firm as quoted until these procedures are completed.

Projects for which the low bid submitted is grossly over the Trustees' filed estimate may have all bids rejected. See Bid Overrun Analysis Policy memo dated January 5, 1999 in Appendix D.

9775 BID PROTESTS

The Trustees have final authority to resolve bid protests arising from the solicitation or award of a contract. The construction administrator shall initially address any protest lodged by a bidder. If the matter cannot be informally resolved, the construction administrator shall serve notification to the bidder that a full and complete formal statement detailing the nature of the problem must be submitted for review, and must be received within five working days after the construction administrator's notification is issued. Failure to file the formal statement shall mean that the matter has been withdrawn. Once the formal statement is received, the matter shall be escalated to the level of vice president of administration for subsequent action (if administered by a campus).

If, prior to the award of a contract, any bidder files a protest on the grounds that the award is not in conformance with the provisions of the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or a decision has been reached by the appropriate campus authorities as to the action to be taken in response to the protest.

The appropriate campus authority may appoint a campus employee, familiar with CSU procurement policies and procedures, and one who would act fairly and impartially, to investigate the problem. This employee shall review the written formal statement filed by the bidder or contractor, analyze the actions of the campus to determine whether it acted in a manner consistent with the requirements of the solicitation document and applicable laws and policy, review with General Counsel when appropriate, and then issue a final decision in a timely manner. The decision shall be in writing and shall be mailed or otherwise furnished to the protesting bidder in such a manner as to ensure receipt.

9780 ACCEPTANCE OF BID PROPOSAL

As provided in the bid documents, the bid proposal as tendered is valid for sixty calendar days (unless changed in the documents) after the bid date. If a bid is to be accepted, the lowest responsible bidder's proposal must be accepted and a contract offered within that period.

9780.01 APPROVAL TO AWARD

Prior to sending the low bidder a notice of acceptance of bid proposal, the following must be compiled into an "Approval to Award a Contract" package:

- DOF approval, coordinated by CPDC (state funded and required);
- Statement of Finances After Receipt of Bid;
- Review of DVBE requirements;
- Agreement Certification.

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The Approval to Award a Contract memo must be approved by the appropriate level of authority as specified in the campus current and approved management plan, after sign-off by the construction administrator, the university planner, the fiscal manager (for certification that funds are available), and Financing & Treasury (only if non-state funded). Refer to SUAM I, section 9002.

9780.02 AWARD OF CONTRACT

Once the Approval to Award is given, a written notice of bid acceptance is mailed to the low bidder from the construction administrator. A copy of the notice is supplied to the design professional, CPDC architect CPDC planner, and Financing & Treasury, if non-state funded.

9780.03 CONTRACT DOCUMENTS

The written notice of intent to accept bid also transmits the contract package. The construction administrator is responsible for preparing and processing execution of the contract package in four complete counterparts.

Use the standard agreement form (for minors and majors), as this form provides that the work will be done in accordance with the contract documents. By definition in the Contract General Conditions, the contract documents include the bid proposal form, the notice to contractors, bonds, insurance certificates, plans, specifications, addenda, agreement, contract general conditions, supplementary general conditions, special conditions, and change orders. Therefore, these items are not listed as exhibits on the agreement form. These documents should be bound into the volume that comprises the contract documents. However, because of their bulk, they do not typically accompany the agreement when it is sent to the Office of General Counsel for review.

Included in the contract package that accompanies the award of contract letter are the following:

- agreement;
- certification (accompanied by contractor's corporate resolution authorizing person to sign contract);
- 100% payment bond (powers of attorney and attestations are provided by the contractor on this form);
- 100% performance bond (powers of attorney and attestations are provided by the contractor on this form);
- subcontractor directory
- insurance instructions

Note that the agreement forms utilized for design/build projects and for CM at Risk projects are not the standard format. The bond forms utilized in CM at Risk projects are also not the standard format. Check the CPDC web site under these procurement methods for sample forms.

9780.03.01 CONTRACT DOCUMENTS – OFFICIAL SET

The agreement, a two-page contract portion of the contract documents that is executed by both the contractor and the Trustees, references the contract documents (as defined in Article 1.00 of the Contract General Conditions) as approved and on file with the Trustees and are made a part of the agreement by reference. It is important for the construction administrator to maintain an official copy of the contract documents including the plans, specifications, and addenda within the contract files. It is recommended that two copies of the plans and specifications be signed (usually at the preconstruction conference), one for each contracting party, and the construction administrator maintains a signed copy of each as the "contract set."

9780.03.02 REVIEW OF CONTRACT DOCUMENTS

The construction administrator is responsible to review the contract package following receipt from the contractor, ensuring that the above-listed items are included and complete, and shall route it for all appropriate signatures. Bonds must be executed by an admitted surety insurer, subject to approval of the Trustees (Public Contract Code section 10821). The construction administrator shall verify the status of the party executing the bond in one of the following ways: 1) printing out information from the following Department of Insurance web site, <http://interactive.web.insurance.ca.gov/companyprofile/companyprofile>, confirming the surety is an admitted surety insurer and attaching it to the bond; or 2) by obtaining a certificate from the county clerk that confirms the surety is an admitted insurer and attaching it to the bond (see Code of Civil Procedure, Section 995.311). The Contract General Conditions require that the bond also be from a surety that is listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Reference the US Treasury listing at the following web site:

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http://www.fms.treas.gov/c570/c570.html#Certified_Companies. The construction administrator shall also review the subcontractor directory, form 702.04S, to ensure that all listed subcontractors are present, that no illegal substitutions have occurred, and that no new subcontractors are listed with a subcontract value that is one-half of one percent of the total bid. Note: the contractor is required to supply and maintain current information requested on the form, and construction administrator shall review each submittal to ensure there are no violations of the Subletting and Subcontracting Fair Practices Act.

9780.03.03 DISTRIBUTION OF CONTRACT DOCUMENTS

Any contract exceeding the value of a minor capital outlay project (see SUAM section 9701.01) must be routed to the Office of General Counsel for endorsement. CPDC shall not sign contracts for campus projects. The contract must be executed in a minimum of two counterparts; campus may require more counterparts. The original counterparts must go to the contractor and the construction administrator. The recommended distribution of executed contract counterparts with original signatures is as follows:

- construction administrator,
- contractor,
- design professional (copy only),
- accounting department, if required.

Copies also are furnished to federal agencies, if federal funds are involved.

9780.04 TIME PERIOD FOR EXECUTION

The contract must be executed by the successful bidder and all counterparts must be returned to the construction administrator together with contract bonds and insurance, within ten days of receipt from construction administrator, not including Saturdays, Sundays, and legal holidays. If the contract has not been executed by the successful bidder in the time specified, the construction administrator may award to the second-lowest bidder or reject all bids. Failure to furnish any required bond constitutes failure to execute the contract.

9780.05 FORFEITURE OF BIDDER'S SECURITY, RETURN OF BIDDER'S SECURITY

If the successful bidder fails or refuses to execute a contract, the bidder's security must be forfeited to the state (Public Contract Code sections 5106, 10781, and 10782). The cash or proceeds must be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost, and publication of notice have been paid. If the second- or third-lowest responsible bidders fail or refuse to execute the contract, their bid securities also shall be forfeited.

Bidder's security of the second- and third-lowest responsible bidders may be withheld from such bidders until the contract has been fully executed. The cashier's checks and certified checks submitted by all other unsuccessful bidders shall be returned to them within ten calendar days after the contract is awarded, and their bidder's bonds shall be of no further effect (Public Contract Code section 10784). Bidder's security of the successful bidder may be returned to the successful bidder upon final execution of the contract and issuance of the Notice to Proceed.

9780.06 NOTICE OF CONTRACT

The construction administrator must report the award of contract to the Department of Fair Employment and Housing, Office of Compliance Programs (Title 2, California Code of Regulations, Section 8117.5), if contract is over \$5,000. The Department of Employment and Housing requires the "Notification of Contract Award" (form [STD16](#)) to be sent electronically to complianceprograms@dfeh.ca.gov.

9780.07 NOTIFICATION TO THE DIVISION OF APPRENTICESHIP STANDARDS, DIVISION OF LABOR STANDARDS ENFORCEMENT

One of the legal requirements for working on a public works project is the employment of apprentices. The Dept. of Industrial Relations (DIR), Division of Apprenticeship Standards provides assistance to contractors in employing apprentices on public works sites. Enforcement of apprentice laws and regulations on public works projects is a function of the DIR Division of Labor Standards Enforcement, <http://www.dir.ca.gov/dlse/dlsePublicWorks.html>.

If the contract exceeds either \$30,000 or 20 working days, the construction administrator must notify the DIR within five working days of the award (Labor Code section 1773.3), using the PWC-100 form, to be filed online at <https://www.dir.ca.gov/pwc100ext/index.html>. The completion and the submission of this form fulfills the required public works project award notification to both the Division of Apprenticeship Standards [Labor Code sec. 1773.3

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(replacing former DAS-13 notification) and the Division of Labor Standards Enforcement Public Works Compliance Monitoring Unit [8 Cal. Code Reg. sec. 16451(a)].

Because the CSU Labor Compliance Program requirements require reporting of all projects over \$1,000, construction administrator shall report all projects over \$1,000 using the PWC-100 online reporting system.

9780.08 ENROLLMENT OF THE PROJECT INTO THE TRUSTEES' INSURANCE PROGRAMS

The construction administrator is responsible to enroll projects into the Trustees' insurance programs, using the online CPDC Insurance database (on the [CPDC](#) website click on the link to Master Plan Database Website). If projects exceed the value of a minor capital outlay project, they must be enrolled in the Builders Risk Insurance Program before the start date specified in the Notice to Proceed. If projects exceed ten million dollars in construction cost, they must also be enrolled in the Owner-Controlled Insurance Program, and notice should be given prior to issuance of bid documents, as specific information shall be included. For more detailed information on these programs, go to CPDC Construction Insurance website at <http://www.calstate.edu/cpdc/cm/constuction-insurance-programs.shtml>.

9781 NOTICE TO PROCEED

After the contract is fully executed, the construction administrator shall issue a Notice to Proceed to the contractor with a copy to the project team, providing the contractor with the official start and end dates, duration of project, and liquidated damages. The major capital outlay contract reads that the contractor shall be notified in writing, five days prior to the effective date of the Notice to Proceed. Once the contract is fully executed, the construction administrator may fax or scan and e-mail the Notice to Proceed to the contractor.

9785 SELECTION OF FIRMS TO SUPPLY SOILS AND MATERIALS TESTING LABORATORIES, AND PROJECT MANAGEMENT AND INSPECTION SERVICES (CONSTRUCTION SERVICES)

The Trustees provide a project manager and/or inspector of record, plus testing by soils and materials testing laboratories for all major construction projects as appropriate. These construction phase services are provided under a service agreement between the Trustees and the firms furnishing project management and inspection or testing laboratories. Section 1720 of the Labor Code requires payment of prevailing rate wages for contracted inspection, land surveying, and related activities on public works construction projects.

During the bid period, the construction administrator requests the design professional to submit a list of the anticipated types of tests that will be required, with an estimated quantity of each type. The design professional is advised that requests for type and number of tests should be in accordance with accepted code requirements. Using the design professional's estimate of tests required as a basis, the construction administrator then reviews the anticipated testing costs from the proposals submitted.

The construction administrator will contract with a firm(s) to supply soils and materials testing and project management and inspection services to the Trustees by the Request for Proposal process. The Trustees' policies in awarding a testing or construction services contract are to:

- solicit at least three proposals from firms in the project geographical area;
- keep testing and construction services costs at a level consistent with current industry practice;
- distribute the work among qualified firms as widely as is practical;
- contract on-site project management and inspection services separately from testing services whenever economically feasible;
- seek firms complying with DVBE goals (see Government Code section 4525 *et seq.*).

Selection of a testing laboratory or firm supplying construction services is also based on:

- qualifications of the laboratory and its personnel to perform anticipated tests or provide professional services,
- estimated costs,
- previous performance,
- using the same soils firm that provided design recommendations.

9785.01 CREDENTIALS FOR INSPECTOR OF RECORD

The credentials of the Inspectors of Record must be appropriate for the project and must be one or more of the following:

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- OSHPD (Office of Statewide Health Planning and Development)
- DSA (Division of the State Architect)
- Other (City- or County-trained and certified) or equivalent certifications,
- or inspector must be a licensed architect or registered engineer (both in California).

The credentials of the Inspectors of Record are to be furnished by the service provider, and a copy shall be maintained in the project files. Duties for Inspector of Record are detailed in SUAM sections 9792.05 and 9792.06. Also see SUAM Appendix D, Sample Responsibilities and Requirements of the campus Inspector During Construction Phase (for Minor and Special Repair Work).

9785.02 PROJECT MANAGER/INSPECTOR OF RECORD COST GUIDELINES

Project managers, construction managers, scheduling consultants, inspectors of record, and specialty inspectors are all forms of professional services. The credentials and abilities of these service providers are extremely diverse. Use of individuals or firms with appropriate expertise to meet the needs of the project is important, and cost can be justified based upon needs.

The prevailing rate wage for a Building Construction Inspector (Operating Engineers) can be found on page 10E, of the Prevailing Rate Wages (with fringe, but without labor burden). Labor burden (includes FICA, workers compensation, etc.) is estimated to be .25 of the prevailing wage including fringe benefits. A multiplier can then be negotiated with the firm(s) supplying the inspection services, an acceptable rate: from 1.2 to 1.5 times the total of prevailing wage, fringe and burden.

9785.03 PROJECT MANAGER/INSPECTOR OF RECORD TEMPORARY OFFICE EQUIPMENT

The temporary office and equipment needs for the project manager/ inspector of record are as identified in the Division One documents. Refer to SUAM section 9721.06.

9786 AWARD OF SERVICE AGREEMENTS FOR FIRMS TO SUPPLY SOILS & MATERIALS TESTING AND PROJECT MANAGEMENT AND INSPECTION SERVICES (CONSTRUCTION SERVICES)

After the contract for construction has been approved, the firm(s) that will supply soils and materials testing and/or project management and inspection services are to be offered a service agreement. The construction administrator is responsible for preparing the service agreement and transmitting it to the firm(s) selected. For these construction phase agreements, utilize the service agreement boilerplate that is included in Appendix D, and not the professional services service agreement, as this format is utilized for design phase services. The Office of General Counsel must approve all service agreements in connection with a project (Public Contract Code sections 10701, 10707 and 10820).

9786.01 TESTING LABORATORY VERIFICATION

Testing laboratories shall have all on-site services verified by the project manager/inspector. Field tickets signed by the project manager/inspector shall be attached to laboratory invoices as a services-provided source document.

9786.02 SERVICE AGREEMENT WITH UNIT COSTS

Construction phase service agreements usually contain unit cost items for use of personnel or types of tests. Often the quantities of units are estimates that are set prior to start of construction and may vary considerably depending upon the specific needs that develop during construction. Normal requirements of the service agreement restrict exceeding the value of the whole agreement, but do not restrict exceeding individual estimated quantities. Use of individual units are reviewed and approved on a continuing basis with the review and approval of each monthly services billing.

9786.03 SERVICE AGREEMENT AMENDMENTS

The appropriate tool to change a construction phase service agreement is a service agreement amendment. The extra services tool applies only to design phase professional service agreements, and does not apply to construction phase service agreements for soils and materials testing and/or project management and inspection services. Service agreement amendments are used to: establish new unit costs, make changes to original quantities, increase/decrease the contract amount, add/delete scopes of services, or adjust the term of the contract. Amendments should document actual services performed and also new services to be performed, so that encumbered funds are not expended against unauthorized services. As done with construction contract change orders, service agreement amendments have

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amendment proposals that must be signed off by all members of the project team, including accounting. Amendments to construction phase service agreements do not require university counsel approval; however, the amendment proposal form has a box to check when the approving authority determines that the amendment warrants a signature by university counsel. The approving authority will review the amendment proposal to ensure that the change is within the following guidelines:

- Nominal extension (less than 25%) to the TERM of the Agreement
- Nominal increase (less than 25%) to the AMOUNT of the Agreement
- Other minor changes

Changes not within these guidelines must be submitted with an additional written justification acceptable to the approving authority. All changes to the language of the Agreement, e.g., hold harmless, insurance, etc., are to be reviewed by university counsel.

Samples of the Service Agreement Amendment and Service Agreement Amendment Proposal can be found in Appendix D, along with other service agreement related forms. Once the project is complete, and services for an agreement are no longer required, issue an amendment to credit the agreement, and disencumber the balance of the funds in the agreement.

9790 PHASE II: CONSTRUCTION OF PUBLIC WORKS PROJECTS

The construction phase commences with the approval of the project construction contract by the Office of General Counsel. The construction administrator is responsible for preparing all contracts, service agreements, and interagency agreements required by the project and routing these for signatures.

9791 PRECONSTRUCTION MEETING

The construction administrator is responsible for scheduling a preconstruction meeting at the project campus immediately after execution of the contract documents with the successful prime contractor. Attendance at this meeting is required of the construction administrator, campus representatives responsible for capital improvement safety and affected facilities, and plant operations; the design professional and major consultants; the contractor; and the project manager/construction inspector. The main duties and responsibilities of the persons filling these positions are outlined at this meeting. A typical agenda is included in Appendix D.

9792 DUTIES AND RESPONSIBILITIES DURING CONSTRUCTION PHASE

The design professional is commissioned by the Trustees to observe and assist in the administration of the project construction and is the only person who may make technical decisions regarding the work. The project manager/construction inspector is the construction administrator's on-site representative to ensure that the approved project plans and specifications are followed. The project manager/construction inspector, who receives technical direction from the design professional and administrative direction from the construction administrator, is responsible for coordination with the contractor.

This section describes the normal duties of the project management team by discipline. On projects that do not have a designated project manager, the normal duties of the project manager will be shared by the project manager/inspector or construction inspector with the construction administrator as assigned by the construction administrator. Reports and records are the responsibility of the project management team, and any reports and records not assigned become the responsibility of the construction administrator. This will include but will not be limited to maintaining a change order log, and preparing a monthly written report including budget control and contingency balance. These reports will track every individual change order item, including classification and Unifomat Building Systems category.

9792.01 CONSTRUCTION ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES DURING CONSTRUCTION PHASE

1. Set the contract starting date (Notice to Proceed).
2. Process the service agreements for the soils and materials testing laboratory services and for project management/construction inspection services.
3. Review and approve bid cost breakdown and initial construction schedule.
4. Inform the necessary state agencies of the contract award.
5. Provide quarterly updates to project costs and completion date in online CPDC Insurance database (reference SUAM section 9780.08).

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6. Interface with state and federal agencies, where required.
7. Certify the contractor's progress payments.
8. Process the testing laboratory invoices and check the laboratory reports.
9. Oversee the work of the project manager/construction inspector; review daily diaries; process the project manager/construction inspector invoices and check the weekly reports.
10. Monitor the work of the design professional and its consultants.
11. Observe implementation of the contractor's on-site safety procedures.
12. Check the contractor's compliance with the terms of the contract.
13. Review any project-related disputes between the contractor, design professional, and Trustees.
14. Coordinate the resolution of environmental, ecological, national heritage, geological, and other problems.
15. Maintain project files.
16. Attend official job meetings with design consultant in attendance.
17. After completion of major construction milestones, i.e. foundation, structural steel, etc., if possible, and if it is in the best interest of the Trustees, settle all outstanding issues, reconcile time, and memorialize in a milestone settlement change order. If attempts to settle these issues fail, document the attempt and place that documentation in the project file. Milestone settlements lessen the burden on the construction administrator of settling these issues at the end of the project, and will prevent the snowballing of claims in these areas. See also SUAM sections 9820.03 and 9833.
18. Review progress reports and project account balances, and maintain contingency status report.
19. Both the general contractor and the Construction Administrator shall maintain an allowance log, indicating each debit from each allowance. The logs shall be reconciled to each other monthly and at project completion.
20. Approve field instructions and change orders per the signature authority in the campus management plan.
21. Coordinate the pre-final and final acceptance inspections with the design professional, the project manager/construction inspector, and the campus.
22. Process the legal acceptance of the contract performance and filing the notice of completion.
23. Conduct final claim negotiations and final settlement of the project account. Document resolution of contract time overrun. Prepare a final change order, as appropriate.
24. Set up any hearing required for contractor claims.

**9792.02 CAMPUS' DUTIES AND RESPONSIBILITIES DURING CONSTRUCTION PHASE
(FOR CPDC-ADMINISTERED PROJECTS)**

1. Maintain liaison between the campus and CPDC on all matters pertaining to the contractor's operations, which affect the Trustees.
2. Attend the site survey inspection conducted by the contractor and the project manager/construction inspector prior to the start of construction.
3. Control the entry of faculty and students into the construction zone.
4. Plan the occupancy of the completed project upon acceptance.
5. List the deficiencies during the first year of occupancy and evaluate these items to determine whether the contractor must correct them.
6. Attend the preconstruction meeting, initial inspection, and final inspection with the construction administrator.
7. Attend project meetings with the design professional and construction administrator.

9792.03 DESIGN PROFESSIONAL'S DUTIES AND RESPONSIBILITIES DURING CONSTRUCTION PHASE

1. Observe construction throughout the construction phase of the project.
2. Periodically examine the contractor's work to ascertain its conformance with contract documents.
3. Certify all of the contractor's payment requests.
4. Determine the need for change orders and issue all change proposals, cost request bulletins, and contract change orders.
5. Prepare and approve all change proposals, cost request bulletins, and contract change orders complete with approved back-up.
6. Issue all clarifications and interpretations of construction documents.
7. Conduct biweekly project site meetings.

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8. Review testing program, including specifying tests that are required in accordance with the construction documents and checking test compliance.
9. Provide consultant services.
10. Assist the Trustees in any litigation or disputes arising from the project construction, including claim rebuttals and attendance at hearings.
11. Conduct the pre-final and final inspections with the project manager/construction inspector, the construction administrator, and campus officials.
12. Review as-built drawings, and prepare and transmit reproducible as-builts to campus.

9792.04 PROJECT MANAGER'S DUTIES AND RESPONSIBILITIES DURING CONSTRUCTION PHASE

On projects that do not have a designated project manager, the duties will be shared by the construction inspector and the construction administrator.

1. Provide on-site construction administration and inspection.
2. Coordinate the construction inspectors.
3. Provide coordination and communication between the construction administrator, the contractor, the campus, the inspectors, and the design professional.
4. Monitor design professional submittal log to assure all submittals are approved in a timely manner (this includes resubmittals). Request design professional to distribute a final submittal log that demonstrates acceptance of all submittals.
5. Document and keep all contract data and prepare reports for construction administrator.
6. Review all contract documents and ensure all appropriate CSU procedures are used. Recommend revisions or new procedures as necessary.
7. Monitor overall budget and schedule, and advise construction administrator of any trends that affect the timely procedures and cost effective completion of the project.
8. Attend weekly and special construction meetings to evaluate and control progress, quality, budget, and other items for action.
9. Review and coordinate all services provided by testing and inspection firms for compliance with service agreement requirements. Review and approve all invoices submitted by these testing and inspection firms, and then submit recommendations to the construction administrator for final approval.
10. Evaluate and make recommendations to construction administrator regarding proposed contract changes and resolution of all claims. As directed by construction administrator, participate in or conduct negotiations to resolve claims or disputes.
11. Maintain a change order log that includes a cumulative total of changes to the contract, and reconcile change order costs with contractor payment requests.
12. Both the general contractor and the Project Manager shall maintain an allowance log, indicating each debit from each allowance. The logs shall be reconciled to each other monthly and at project completion.
13. Coordinate inspection, final acceptance, and scheduling of occupancy.
14. Monitor completion and turnover of operation and maintenance data and record drawings. Monitor required operating texts and training required by contract. Execute the Certification of Completion form. Complete and transmit the Project Closeout Checklist to the construction administrator.
15. Observe, check, and measure items placed in the work for compliance to contract documents and directives from design professional, in conjunction with the construction inspector.
16. Review the activities of the construction inspector in the performance of the construction inspector's duties.
17. Develop procedures to initiate and maintain document files.
18. Review construction inspector's daily diary each day, and weekly and monthly reports.
19. Maintain daily diary describing general events, noting problems and unusual events.
20. Submit weekly and monthly written reports to construction administrator and campus to reflect new and unresolved issues, schedule, quality control, submittal review, budget control including contingency balance, and any other issues. Project progress reports shall reflect completed work vs. contract time.

9792.05 DUTIES AND RESPONSIBILITIES OF THE CONSTRUCTION INSPECTOR DURING CONSTRUCTION PHASE (WHEN PROJECT MANAGER IS ASSIGNED)

1. Be familiar with the plans and specifications and the contractor's operations at all times.

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2. Personally observe, check and measure items placed in the construction for compliance to the contract documents, technical instructions from the design professional and directives from the project manager (and construction administrator, when necessary).
3. Maintain a daily diary describing the general work performed, noting problems, rejections and unusual events. The diary should be completed daily, tersely, factually, and should reflect the contractor's activities each day. Observe subcontractors working on the project daily and verify that all are listed on the contractor's current subcontractor directory. Report any discrepancies to the construction administrator.
4. Relay instructions from project manager, construction administrator, and design professional to contractor and problems from contractor to design professional for solution. Actively assist contractor in securing decisions and clarifications from design professional.
5. Supervise and/or perform on-site testing and ensure that all required tests are performed by testing laboratory, contractor or design professional as specified in the contract. Check and report all failed tests to project manager and design professional, and request instructions as to further procedure.
6. Assist project manager in checking billings from testing laboratories to see that billings reflect only those tests actually performed.
7. Assist project manager in checking contractor's estimate of work completed for progress payments based on the approved cost breakdown.
8. Advise project manager and design professional of circumstances surrounding requested changes in the work.
9. Prevent installation of any related work until shop drawings have received final approval from the design professional.
10. Record the design professional's or his consultants' verbal instructions during field supervision trips in the inspector's daily log for that day or on the field instruction sheet.
11. Inspect all materials immediately upon their delivery to the site to ensure that they comply with the specifications and are in good condition, undamaged, etc. Mark, segregate and remove condemned materials. For materials stored off-site, ensure that the warehouse storing the materials is a bonded warehouse, that all materials are inventoried and tagged as the property of the CSU, and that the quantities stored and inventoried match the quantities on the payment request, if applicable.

9792.06 DUTIES AND RESPONSIBILITIES OF THE CONSTRUCTION INSPECTOR DURING CONSTRUCTION PHASE (WHEN PROJECT MANAGER IS NOT ASSIGNED)

1. Be familiar with the plans and specifications and the contractor's operations at all times.
2. Personally observe, check and measure items placed in the construction for compliance to the contract documents, technical instructions from the design professional and directives from the construction administrator.
3. Maintain a daily diary describing the general work performed, noting problems, rejections and unusual events. The diary should be completed daily, tersely, factually, and should reflect the contractor's activities each day. Observe subcontractors working on the project daily and verify that all are listed on the contractor's current subcontractor directory. Report any discrepancies to the construction administrator.
4. Relay instructions from construction administrator and design professional to contractor and problems from contractor to design professional for solution. Actively assist contractor in securing decisions and clarifications from design professional.
5. Monitor design professional submittal log to assure all submittals are approved in a timely manner (this includes resubmittals).
6. Supervise and/or perform on-site testing and ensure that all required tests are performed by testing laboratory, contractor or design professional as specified in the contract. Check and report all failed tests to construction administrator and design professional, and request instructions as to further procedure.
7. Check contractor's estimate of work completed for progress payments based on the approved cost breakdown.
8. Maintain a progress schedule to reflect work completed versus contract time.
9. Advise construction administrator and design professional of circumstances surrounding requested changes in the work.
10. Prevent installation of any related work until shop drawings have received final approval from the design professional.
11. Record the design professional's or his consultants' verbal instructions during field supervision trips in the inspector's daily log for that day, or on the field instruction sheet. Whenever contacting a consultant directly, review the situation with the design professional before issuing instructions.

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12. Receive samples which are required to be furnished at the job site; record date received and from whom, notify design professional of their readiness for examination, record design professional's approval or rejection; and maintain custody of approved samples.
13. Inspect all materials immediately upon their delivery to the site to ensure that they comply with the specifications and are in good condition, undamaged, etc. Mark, segregate and remove condemned materials. For materials stored off-site, ensure that the warehouse storing the materials is a bonded warehouse, that all materials are inventoried and tagged as the property of the CSU, and that the quantities stored and inventoried match the quantities on the payment request, if applicable.
14. Upon completion of the project, review with the design professional anything that is called for in the contract documents, such as all guarantees, keying, operating instructions, completion of final punch list items, etc. Confirm that these are received before certifying completion of the work in writing.
15. Make sure that the required record drawings are accurately marked up daily or as required.
16. Report to the Trustees poor performance or any acts prejudicial to their interests. This report shall be in writing, verifying a telephone call to construction administrator whenever such conditions may come to inspector's attention.
17. Enforce restrictions peculiar to the project.
18. Assist construction administrator and design professional in the final inspection and project acceptance phase.
19. Certify at completion of construction the project was constructed according to contract documents.
20. Complete and transmit Project Closeout Checklist to construction administrator.

9792.07 RESTRICTIONS ON CONSTRUCTION INSPECTOR'S AUTHORITY

The construction inspector (with or without a project manager on site) SHALL NOT:

1. authorize deviations from the contract documents;
2. avoid conducting any tests required;
3. interfere with the responsibilities of the contractor and its field staff;
4. advise on, or issue directions relative to any aspect of the building technique or sequence unless a specific technique or sequence is called for in the specifications;
5. authorize or advise the campus to occupy the project, in whole or in part, prior to final acceptance of the building.

9792.08 DUTIES AND RESPONSIBILITIES OF THE PROJECT MANAGER/CONSTRUCTION INSPECTOR (COMBINED ROLE, ONE PERSON)

When one person performs the duties of both the project manager and the construction inspector on a project, then that person shall follow the duties as detailed in SUAM sections 9792.06 and 9792.07.

9793 SITE ACCEPTANCE PRIOR TO CONSTRUCTION

Prior to the start of construction, the contractor will conduct a site survey of the contract work area with the project manager/construction inspector and the campus representative. The purpose of the survey is to note the exact condition of the site and adjacent developments. The inspector or contractor is encouraged to take photographs or videos.

Any existing condition that is not as represented in the plans and specifications must be noted on Site Survey and Acceptance, Form 702.08. Existing damage to buildings or to other properties near the construction site also must be noted. Failure to do so may result in disputes over repair charges to the contractor. Completed forms must be signed as indicated and sent to the construction administrator, with copies to all parties.

9800 CONTRACT RECORDS, SCHEDULES, AND DRAWINGS MAINTAINED DURING CONSTRUCTION PHASE (MAJOR PROJECTS; MAY BE OPTIONAL FOR MINOR PROJECTS)

9800.01 CONTRACTOR'S PROGRESS SCHEDULE

The contractor must prepare a construction schedule and submit copies of it to the design professional, project manager/construction inspector, and construction administrator as specified. The design professional, with input from the project manager/construction inspector, construction administrator or a scheduling consultant, must then review and approve the schedule and distribute copies of it to the design professional, contractor, the project manager/construction inspector, the campus, and the construction administrator.

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Per Contract General Conditions Article 4.16, Schedule, “the submittal of a fully revised and acceptable contractor’s initial construction schedule shall be a condition precedent to the processing of the second monthly payment application, unless the Trustees grant a time extension due to unusual circumstances.” Failure on the Trustees’ part to adhere to this requirement of the contract may render the requirement void.

9800.02 PROGRESS COMPLETION SCHEDULE

The project manager and/or construction inspector are responsible for reviewing the progress completion schedule on a monthly basis and alerting the design professional and the construction administrator of any slip in the contractor’s performance of the approved construction schedule.

9800.03 CONTRACTOR’S BID COST BREAKDOWN

The contractor must prepare a contract bid cost breakdown or schedule of values, and submit copies of it to the design professional, project manager/construction inspector, and the construction administrator within three weeks of the official construction starting date. The breakdown must list the major items of the contract work and the cost of performing each item. A sample format is available in Appendix D.

The design professional must review and coordinate approval of the bid cost breakdown with the project manager/construction inspector and the construction administrator. The construction administrator uses the approved bid cost breakdown to approve the contractor’s payment requests.

9800.04 CONTRACTOR’S AWARDED CONTRACT VALUE UNIFORMAT BREAKDOWN

The contractor shall also provide the breakdown of the awarded contract value by completing the Uniformat Building Systems Breakdown by Discipline form. This information is valuable to the Trustees for budgeting and reporting purposes, and the contractor shall submit it to the construction administrator along with the initial submittal of the schedule of values.

9800.05 OFFICIAL PROJECT DIARY

The project manager and construction inspector are (both) responsible for maintaining separate official project diaries on the form furnished by the Trustees. Entries must describe the general work performed and note any problems, rejections, or unusual events. At the direction of the Trustees, the project manager and construction inspector may utilize any of the following methodologies to maintain the daily diary:

- Handwritten notes in a bound daily diary book. At the end of each day the project manager and construction inspector must sign and date the page directly under the last line of text in their respective diaries, to prevent postdated entries.
- Electronic daily diaries maintained within a project management computer application containing an electronic signature process. It is acceptable for the project manager/construction inspector to post his or her daily notes in this manner.
- Electronic daily diaries maintained without an application containing an electronic signature process. It is advised that at the end of each day the project manager and construction inspector print out that day’s entry, and then sign and date the page directly under the last line of text to prevent postdate entries and then keep that signed page in a file.

Monthly or more frequently, the project manager and construction inspector shall do one of the following:

- print out daily diaries (if not previously printed) or
- convert all diary entries to PDF files and electronically back them up for security purposes.

At the end of the project these shall be stored with the project files for ten years after completion.

The official project diary must be maintained daily in a terse, factual style and should be reviewed and initialed monthly by the construction administrator (by utilizing an electronic signature process within above mentioned project management software or manually), because, in case of litigation the official project diary may be introduced in evidence.

9800.06 INSPECTION RECORD DRAWINGS

The project manager/construction inspector is responsible for keeping a set of working drawings on which to indicate which sections and items of the contract work have been inspected and approved. The method of indicating that this

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inspection has been performed is left to the discretion of the project manager/construction inspector. The design professional should review these check drawings to assure that adequate attention has been given to the inspection of structural features.

9800.07 RECORD DRAWINGS

The contractor is responsible for maintaining record drawings during the course of construction so that the design professional may correct the tracings at the completion of the contract. These will include, but not be limited to, mechanical, electrical, fire safety, plumbing, and all utilities. The project manager/construction inspector will monitor the contractor's marked-up record drawings for accuracy and assure that they are kept current on a weekly basis, and shall report any non-compliance at the project meetings.

These drawings must show actual constructed conditions, including all changes in dimension or location from the originally approved working drawings. Each change order to the contract must be shown by reference or sketch on the record drawings. Supplementary drawings and change order drawings become a part of the record package. Each sheet of the contract drawings that differs from the constructed condition must be marked to reflect the actual conditions, and sheets so changed must be noted on the drawing title sheet.

Contractor's failure to submit these as-builts prior to completion of the project may result in penalty application and lower ratings on performance evaluations, which could impact contractor's prequalification. Contact CPDC's chief of construction management for assistance, should this situation evolve.

9800.08 OFFICIAL PROJECT FILES

The project manager/construction inspector is responsible for maintaining a project file for the contract. It must be neatly kept and adequately protected, and must be available for reference at any time. At the completion of the project, all project files including approved materials and equipment brochures must be given to the campus. The project manager/construction inspector is responsible for the transfer. All project diaries are extracted and forwarded to the construction administrator.

9801 OFFICIAL NOTICES TO THE CONTRACTOR

Official notices may be served or addressed to the contractor for emergency work, to outline deficiencies in work performed, or to convey field orders. A copy of each notice served on the contractor by the project manager/construction inspector must be sent to the design professional, the campus, and the construction administrator.

The construction administrator shall timely notify the contractor of the receipt of any third-party claim relating to the project (Public Contract Code section 9201).

9802 MATERIALS, WORK, AND SOILS TESTS REQUIRED DURING CONSTRUCTION

Materials and equipment tests are listed by the design professional and approved by the construction administrator prior to the start of construction. Additional tests of any building materials, equipment fixtures, or completed or partially completed work may be requested during the construction period. Additional soils engineering tests may be requested during the construction period.

9802.01 RESPONSIBILITY FOR WORK AND MATERIALS TESTS

The design professional is responsible for distributing a list of required tests to the construction administrator, the project manager/construction inspector, and the contractor prior to the preconstruction conference. The project manager/construction inspector is responsible for ensuring that all tests on the list are performed by the laboratory. In addition to tests listed, the design professional has the right to order the testing of any materials, including fixtures and equipment, or any work, completed or partially completed, during construction.

The design professional has overall responsibility for directing the tests to be performed, and under his/her instructions, the project manager/construction inspector is in charge of the daily review of the testing program.

9802.02 RESPONSIBILITY FOR COSTS OF WORK AND MATERIALS TESTS

In accordance with the agreement with the laboratory, the Trustees usually pay all costs of the initial tests required. Whenever the design professional's option to take further samples and tests is exercised and the results show that the

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material or work is not defective, the Trustees shall bear the costs. If the results of such samples and tests show that the material or work is defective, the contractor shall bear the costs. Samples that are of value after testing shall remain the property of the contractor (Contract General Conditions for Design-Bid-Build Major Projects, Article 5.06).

9802.03 REJECTION OF WORK OR MATERIALS TESTED

Should any portion of the work done or any building materials, fixtures, or equipment delivered fail to comply with the contract requirements, such work, materials, fixtures, or equipment shall be rejected in writing and must immediately be made satisfactory to the design professional by the contractor at no additional expense to the Trustees. Any rejected materials, fixtures, or equipment must be removed from the premises immediately, at the contractor's expense.

9802.04 PROCEDURE FOR PAYMENT FOR TESTING SERVICES

Payment for work under the service agreement with the testing laboratory is made monthly, in arrears, upon completion of the services performed. Invoices, in duplicate, must be sent to the construction administrator, with a copy to the project manager/construction inspector, who initials them to verify that the tests indicated have been completed satisfactorily. The construction administrator shall receive verification of charges from the project manager/ construction inspector prior to authorizing payment. The testing laboratories should attach verified field tickets to monthly invoices as a source document.

9802.05 SOILS ENGINEERING TESTS

The consulting soils engineer or geotechnical engineer that is utilized by the design professional and structural engineer during the design of the project usually performs soils engineering tests during construction. The construction administrator prepares a service agreement for the construction phase soils engineer services.

The design professional is responsible for providing the parameters of the services required from the soils engineer. Copies of these requirements must be sent to the construction administrator. The procedure for soils engineer payments parallels the procedure outlined for testing services.

9803 CONTRACT PAYMENT PROCEDURES

The construction administrator must approve all monthly partial payments to the contractor (Public Contract Code sections 10851 and 10853) and all other project costs, except payments for the services of the design professional, landscape design professional, and engineer. The contractor's requests for payment must be made on a Contractor's Payment Request, Form 702.12, supported by a schedule of values. Monthly partial payments of the contract sum are made to the contractor for work completed. The amounts of these payments are determined from the approved bid cost breakdown (schedule of values) information furnished to the design professional and construction administrator by the contractor at the start of the project. The breakdown lists the major items of the contract work and the cost for performing each of the items.

The contractor and the project manager/construction inspector estimate the percentage of completion of each item of work on a monthly basis. This estimate, which is entered on the schedule of values, is used in preparing the contractor's monthly payment request. The contractor is responsible for signing the payment request and submitting it for approval by the project manager/construction inspector. The contractor is then responsible for submitting it to the design professional for approval. The design professional is responsible for reviewing and signing the payment request and transmitting it to the construction administrator for approval. The construction administrator approves the payment and sends one copy to the accounting office for processing and payment. The construction administrator also is responsible for distributing signed copies of the payment request to the contractor, the project manager/construction inspector, and the design professional. The construction administrator shall ensure that every payment request is processed and paid timely, before 39 calendar days has elapsed from the date of receipt by the construction administrator. The penalty for not making payment of an undisputed and properly submitted payment request is ten percent per year (Code of Civil Procedure, Section 685.010; Public Contract Code section 10853).

Copies of forms discussed in this section are supplied the contractor by the construction administrator.

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9804 CONTRACTOR ESCROW AGREEMENTS

Contractors may execute an escrow agreement with the Trustees and the State Treasurer, deposit funds into an escrow account maintained by the State Treasurer, and receive periodic release of the minimum retention from their contract that is otherwise held until completion of the project (Public Contract Code section 10852). Refer to Section 20, Escrow Agreement, in the Construction Management Procedures Manual (CPDC Training manual), and Procedures for Placing of Securities in Lieu of Contract Retention in Appendix D. The State Treasurer serves as escrow agent.

Many contractors take advantage of this provision by making deposits with the State Treasurer, which cover the retainage, and arranging for release of retainage from project funds to them, and enjoying interest on the escrow deposits until completion of the project. The escrow deposits are released to the contractor in whole or in part when the project is complete, if there are no stop payment notices or other claims against the deposits.

9805 RETENTION OF MONTHLY PAYMENTS TO CONTRACTOR

Absent an escrow agreement, from each monthly payment due the contractor, five percent is retained until completion of all contract work (Public Contract Code section 10851).

Any valid stop payment notice served upon the Trustees according to law (Civil Code section 9300 *et seq.*) obligates the Trustees to withhold from the contractor funds due or to become due the amount of the claim stated in such stop payment notice and to provide for the Trustees' reasonable cost of litigation (deemed to be 125% of the stop payment notice claim amount) until the stop payment notice has been released according to the requirements of the Civil Code section 9350.

The Trustees may permit the contractor to file a release bond to release money withheld (Civil Code section 9364), or the contractor may seek determination of stop payment notice rights in a summary proceeding (Civil Code section 9400 *et seq.*).

Refer to SUAM section 9811 for further information regarding stop payment notices. Before releasing money withheld pursuant to a stop payment notice, consult with university counsel in the Office of General Counsel to ensure the release is proper.

9806 PAYMENT OF OTHER PROJECT COSTS

Other project costs reviewed and approved by the construction administrator and processed for payment by the accounting department include costs for:

- advertising for bids (proof of advertising required);
- inspection and project management costs (verification of hours worked required);
- soil tests;
- materials testing;
- fabrication inspection;
- consulting services.

Reproducing plans, printing and binding specifications, and transportation of plans and specifications are billed through the design professional as a reimbursable item under the architectural agreement.

9810 PRELIMINARY NOTICE

A preliminary notice is required on public works to establish stop payment notice rights under certain conditions (Civil Code section 9300). Any subcontractor or supplier not having a direct contractual relationship with the prime contractor, other than a person who performed actual labor for wages and certain labor trust funds, must have given a written preliminary notice to the contractor and the campus, as a necessary prerequisite to the validity of a stop payment notice. Notice must be given within twenty calendar days after claimant first furnished labor, services, equipment, or materials to the job site. A preliminary notice filed thereafter affects only labor, services, equipment, and materials furnished within twenty days of the notice's filing.

The notice must contain, with substantial accuracy, a general description of the labor, services, equipment, or materials furnished or to be furnished, and the name of the party to whom furnished, and may be served to the contractor and the Trustees by first class, registered, or certified mail, or by personal service.

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The Trustees should take no action upon receipt of a preliminary notice. The notice should be filed in the contract files for use, if and when needed. Unless the claimant subsequently files a stop payment notice, the preliminary notice has no effect.

9811 STOP PAYMENT NOTICE

References: Stop Notice Procedure Manual published by the Office of General Counsel (August 2004); Law of Design and Construction, Section XV (2/23/11), Civil Code section 9000 *et seq.*

A stop payment notice is a written notice to an awarding authority to withhold monies from the contractor which are otherwise due and payable to satisfy claims for labor and/or materials furnished by subcontractors, suppliers, or others. Under a public works contract, there can be no mechanic's or materialmen's liens against state property; therefore, such claimants are limited to the use of stop payment notices. Any person furnishing labor or supplies or equipment to a public works project, except the original contractor, may give notice.

The stop payment notice must state the kind of labor, services, equipment, or materials furnished or agreed to be furnished by the claimant, the name of the person to or for whom it was furnished, the monetary value of labor or materials, etc., already furnished, and the total value of all that was agreed to be done or furnished by the claimant. The claimant, if listed in the bid (i.e., a first tier subcontractor), need not have filed a preliminary notice in order to file a stop payment notice. If the claimant has no contractual relationship with the prime contractor (is not a listed subcontractor), the claimant must have filed a preliminary notice in order to file a stop payment notice.

The stop payment notice may be served by personal service or by registered or certified mail at any time after commencement of the public works contract and before the expiration of thirty calendar days after the recording of a Notice of Completion or Notice of Cessation, if such notice has been timely recorded, or, if no Notice of Completion or Notice of Cessation has been timely recorded, notice may be filed within ninety calendar days after completion of the project.

A Notice of Completion or Cessation is timely filed if it is filed with the County Recorder within ten (10) days of the completion or cessation of the work.

Upon receipt of a stop payment notice that has been filed in accordance with Civil Code, the construction administrator shall withhold from the prime contractor money due or to become due in an amount sufficient to cover the amount claimed in the stop payment notice, plus 25 percent of the claimed amount for the anticipated cost of litigation, provided that the claimant has filed a preliminary notice or is a first tier subcontractor. If claimant is not a first tier subcontractor, and has not filed a preliminary notice with the construction administrator, then the stop payment notice is deemed invalid.

9812 NOTIFICATION OF EXPIRATION PERIOD

If the claimant pays the construction administrator ten dollars (\$10.00) at the time of filing the stop payment notice, the construction administrator shall notify the claimant of the expiration of the period for filing stop payment notices. The notice shall be served by personal service, or by registered or certified mail, express mail, or overnight delivery by an express service carrier, no later than ten calendar days after each of the following events: 1) completion of the public works contract, whether by acceptance or cessation, and 2) recordation of the notice of completion or cessation.

9813 RELEASE OF STOP PAYMENT NOTICE

The construction administrator may release monies which are due the contractor but which have been withheld pursuant to stop payment notice in any of the following circumstances.

- The stop payment notice claimant notifies the construction administrator in writing that the claimant releases the stop payment notice. This release must be unconditional. In essence, an unconditional release rescinds the stop payment notice.
- The contractor against whom the claim has been filed provides the construction administrator with a bond executed by a corporate surety approved by the state in the amount of 125 percent of the amount claimed in the stop payment notice; that is, the contractor "bonds around" the stop payment notice (Civil Code section 9364). Permission to bond around the stop payment notice is discretionary with the CSU, and therefore the

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construction administrator may insist that the surety on the release bond is different from the surety on the payment bond. In requiring different sureties, the CSU is better protected, as the surety on the bond will be jointly and severally liable with the surety on the payment bond. A sample Stop Payment Notice Release Bond can be found in Appendix D.

- The contractor institutes "summary proceedings" which results in release of funds withheld (Civil Code section 9400 *et seq.*).
- No action is taken by the stop payment notice claimant to enforce payment within ninety calendar days of the expiration of time for filing stop payment notices.
- The stop payment notice claimant, after instituting an enforcement action in court, fails to bring the action to trial within two years.
- A court of competent jurisdiction in an enforcement action rules in favor of the prime contractor and orders the release of the monies.

NOTE: Because action on a Stop Payment Notice may require several years to resolve, it is important that any monies retained not be allowed to expire. The monies do not belong to the state, but rather the state acts as a stakeholder until it is determined whether the monies belong to the prime contractor or to the subcontractor claimant.

9814 NOTICE TO WITHHOLD

Reference: Labor Code sections 1720, 1730-1733.

The Department of Industrial Relations may file a notice to withhold when it has determined that a contractor has failed to pay prevailing wage rates as required by Labor Code sections 1774 (regular pay) and 1815 (overtime). The notice to withhold will specify the requirements and actions to be taken.

Upon receipt of a Notice to Withhold, the construction administrator shall withhold from the prime contractor money due (or to become due) in an amount sufficient to cover only the amount of the withholding notice. No additional amount is necessary to be withheld.

The Department of Industrial Relations may request payment relating to a Notice to Withhold. The Trustees shall make this payment directly to the Department of Industrial Relations, and the funds for this payment shall come directly out of amounts that are otherwise due and payable to the contractor.

Because the notice to withhold is based on Labor Code provisions, no procedure exists for the contractor to obtain a release of the withheld amount. If the contractor disagrees with the notice to withhold, it must sue for a court determination. Thus, absent a court order, the Trustees must withhold and upon request, remit to the Dept. of Industrial Relations.

9815 CSU NOTICE TO WITHHOLD

The Trustees have implemented a labor compliance program for projects funded from either:

- the Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004 in which construction starts on or after April 1, 2003, or
- State-issued bonds such as general obligation or lease revenue bonds (systemwide revenue bonds are not considered State-issued bonds), in which the contract starts on or after August 1, 2010.

The Department of Industrial Relations will not be administering labor compliance for these projects, but the Labor Compliance Unit in CPDC will do so. Refer to SUAM section 9824 for more information on the Trustees' Labor Compliance Program.

9816 BONDING COMPANY INQUIRIES

Bonding companies have a financial risk in the success of the project. The sureties often send a standard questionnaire at mid-contract, and periodically thereafter until completion. The construction administrator should respond in a timely manner to the questionnaire, especially if there are concerns with schedule, so that the bonding company is informed and in a position to push the contractor to a successful completion. List all stop payment notices on the questionnaire, so the sureties may use their influence to bring things current.

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Exercise caution when completing these questionnaires. Do not complete or sign any questionnaire that includes language that exonerates the bond. The performance bond lasts even beyond the ten-year latent defects period, and it exists to guarantee faithful performance of the contact even beyond the limitations period. If a question arises about the effect of any statement on a surety's questionnaire, contact your attorney in the Office of General Counsel for clarification, so as not to lose protection.

When a request from a bonding company comes in, copy the return envelope and attach it to a copy of the completed request for filing in the contract file. This record is important to maintain in the event you need to contact the bonding company, as the envelope and/or questionnaire usually contains a local address and contact name.

9820 CHANGE ORDERS TO CONTRACTS FOR MAJOR CAPITAL IMPROVEMENT PROJECTS

A change order is a legal instrument for altering an existing contract. Through the use of this vehicle, the construction administrator may obligate additional funds, obligate credits, increase or decrease the scope of the project, or extend the project completion date (Public Contract Code sections 10827, 10840-10842). The change order procedure is a formalized process that must be followed for any change in the contract conditions, including the scope of work, the quality and quantity of materials furnished, or the time of performance. Change orders must be agreed to mutually by both contracting parties and must be executed in writing on a Trustees' contract change order, form 703.04. Procedures for the submittal and processing of change orders are included in Appendix D.

To ensure adequate control, only the construction administrator may contact the contractor or design professional directly to initiate changes in the work during the construction phase. All requests for proposed changes by the design professional, campus, or contractor must be made to the construction administrator for evaluation and further processing.

9820.01 SUBCONTRACTOR MARK-UPS

The contractor is required to identify whether a listed subcontractor is a subsidiary or is owned or partially owned by the contractor (shared profits). The relationship is again sought with use of the subcontractor directory, form 701.04S. The purpose in identifying the relationship or shared profit status is to safeguard against abuse of change order mark-ups. Any subcontractor mark-up otherwise applicable to a change should be adjusted in proportion with the shared profits.

When adding or deducting scope previously defined as alternatives in the bid, but not awarded with the contract, nor picked up within the time limit defined in the bid proposal, it is important to recognize that the contractor is not bound to the prices submitted with his/her bid, unless he/she voluntarily agrees to extend the time period. Costs for the added/deleted scopes previously bid as alternatives will be priced according to the change order procedure.

9820.02 SCOPE CHANGES (NEW PROJECT)

The clear intent of the Public Contract Code is to award a contract for a project by competitive bid to the lowest responsible bidder. To issue significant change orders that add in scope that is outside the program is a violation of the competitive bidding process, and contractors will protest that they were disallowed the opportunity to compete. There is an obvious need to exercise good judgment when issuing change orders that add new scope. Refer to the section entitled "Change Orders," of "The Law of Design and Construction," a manual distributed by Office of General Counsel at CPDC training sessions.

Scope changes cannot be implemented when they conflict with the above. In addition, the California State University shall complete each streamlined project without any change to its scope. The scope of a project means, in this respect, the intended purpose of the project as determined by reference to the following elements of the budget request for that project submitted by the California State University to the Department of Finance: (a) the program elements related to project type, and (b) the functional description of spaces required to deliver the academic and supporting programs as approved by the Legislature.

9820.03 MILESTONE, OCCUPANCY OR GLOBAL SETTLEMENT CHANGE ORDERS

For all projects with milestones or phasing, the contract should include liquidated damages provisions for milestones, and the construction administrator shall document completion of each project phase via a change order. The suggested language for such a change should include the standard settlement language as found in the sample

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milestone change order in Appendix D. If a campus takes occupancy of all or a portion of a project before filing for completion, the construction administrator shall document occupancy by field instruction and/or change order, and may start the guarantee period for that portion of the project (refer to Article 4.09 of the Contract General Conditions). A sample occupancy change order can be found in Appendix D. At the end of the project, after all change order/claims negotiations have occurred, the construction administrator should issue a global settlement change order documenting the settlement conditions and including the special settlement language. All such change orders should be coordinated with CPDC's chief of construction management. Following are three types of global settlement change orders (each of these are in Appendix D).

Prior to issuing these change orders, any deviation by the campus from the settlement language contained therein shall be reviewed and approved by CPDC's chief of construction management, who will consult with general counsel on the proposed language change as needed:

1. One-way legal global settlement change order containing complete settlement language (this is preferred)
2. Two-way, mutual release, legal global settlement change order containing complete settlement language (use if Contractor won't agree to a one-way global settlement change order containing complete settlement language, item 1 above)
3. Simple global settlement change order (use only if Contractor won't agree to a one-way or two-way global settlement change order containing complete settlement language, above. This is least preferred method).

It is important to note that when executing these change orders, the contractor waives his rights to a claim (for that particular phase or for the entire project as applicable). The construction administrator shall ensure that all back-up documentation is with the change order. On substantial amounts or when waiving liquidated damages, the construction administrator shall attach to the change order a memo to the project file (that displays administrative vice president/assistant vice chancellor concurrence with settlement). This memo shall document the negotiations that occurred, amounts awarded in the change order, time extensions given, liquidated damages waived, etc.

9821 SUBCONTRACTOR SUBSTITUTIONS

There are nine bases identified the Subletting and Subcontracting Fair Practices Act for a prime contractor to request substitution of a subcontractor (Public Contract Code section 4107(a)). CPDC recommends that the construction administrator, as identified and named in the Notice of Intent to Award letter to the Contractor, shall administer the substitution process.

9821.01 SUBSTITUTION OF SUBCONTRACTORS/SUBSTITUTION HEARING

Public Contract Code section 4107(a) addresses contractors' requests for subcontractor substitutions (refer to the statute for the list of allowable reasons for substitution). The construction administrator shall act timely in issuing the five-working-days written notice served by certified mail to the listed subcontractor. The five-day response period shall be tracked, as this is the time limit for the subcontractor to mail out (use postmark) its dispute. The postmark on the subcontractor's response is the date the response is deemed to be received.

If the subcontractor protests substitution within the five working days period, the construction administrator shall expeditiously call CPDC's chief of construction management so that he/she may appoint a hearing officer and then schedule a substitution hearing. If either or both the prime contractor and subcontractor give notice that they intend to bring their attorney, then CSU General Counsel shall be invited to attend. It becomes very difficult to set a hearing time with so many parties, but it is the Trustees' obligation to hold the hearing. If the only time when all parties are available is unreasonably in the future, then the construction administrator may issue, by certified mail, a hearing notice for a more prompt, although not entirely convenient time. This notice shall give the two principal participants a five working day notice (plus mailing time) of the hearing, at the time and place specified; failure to attend waives their rights. After the substitution hearing, the hearing officer will submit his/her findings in writing to both the general contractor and the protesting subcontractor, and copy the construction administrator at the campus. The construction administrator shall then confirm the hearing officer's findings in writing by letter to the general contractor. If the hearing officer assesses a penalty, the construction administrator shall issue a change order to the general contractor for collection of the penalty by referencing and attaching the hearing officer's findings to the change order, or the construction administrator may accept a check from the general contractor in lieu of issuing a change order.

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A common reason for requesting substitution is in section 4107(a)(4), failing or refusing to meet the prime contractor's bond requirements. Section 4108, Faithful Performance and Payment Bonds of Subcontractors, requires the prime contractor to advertise its subcontractor bond requirements. Failure to do so shall preclude the prime contractor from substitution based upon bond requirements. Another common reason is assertion of an inadvertent clerical error under section 4107(a)(5). In order to assert a claim of clerical error in the listing of a subcontractor, the prime contractor must give written notice to the campus, the listed subcontractor, and the intended subcontractor within two working days after the bid opening (section 4107.5).

Should the prime contractor fail to timely notify the construction administrator that he/she wants to make a substitution, and issues a subcontract to the replacement subcontractor before securing the Trustees' approval of the substitution, then the prime contractor may be subject to a penalty per section 4110.

9821.02 CARPETING: SUBLETTING SUBCONTRACT WITH RESPECT TO LABOR

Public Contract Code section 4107.2 prohibits a subcontractor, listed by the prime contractor to furnish and install carpeting, from voluntarily subletting its subcontract with respect to any labor to be performed, unless subcontractor specifies a subcontractor in its bid for that subcontract to the prime contractor. If the listed subcontractor does not list a sub-tier subcontractor to perform installation work in its bid to the prime contractor, and sublets the installation work to a sub-tier contractor, then the prime contractor is subject to a penalty per section 4110.

9821.03 CLERICAL ERROR

Any listed subcontractor who has been notified by the prime contractor of an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the construction administrator and to the prime contractor a written objection to the claim of clerical error. Failure to submit a written objection shall be considered evidence of the subcontractor's agreement that a clerical error was made. The construction administrator may approve the substitution of the intended subcontractor if one of the two following conditions prevails:

- the prime contractor, the subcontractor listed in error, and the intended subcontractor each submits to the construction administrator an affidavit affirming the fact that a clerical error was made, provided that all three affidavits are filed within eight working days from the time of the prime bid opening, or
- such affidavits have been filed by both the prime contractor and the intended subcontractor within the specified time, and the subcontractor listed in error fails to submit within six working days, to the construction administrator and the prime contractor, a written objection to the claim that a clerical error was made.

If the listed subcontractor submits to the construction administrator a written objection to the prime contractor's claim of clerical error within six working days, the construction administrator shall investigate both claims and conduct a public hearing, see SUAM section 9821.01 (Public Contract Code section 4107.5).

9821.04 APPROVAL OF SUBSTITUTION AND REPLACEMENT SUBCONTRACTOR

When the construction administrator approves the subcontractor substitution, he or she shall do so in writing citing the reason accepted for the substitution. Additionally, the construction administrator shall approve the contractor's requested replacement subcontractor in the letter approving the substitution. Contractor should notify Trustees in event he substitutes the replacement subcontractor.

Construction administrator shall request the Contractor update the subcontractor listing document (List of Subcontractors—Additional Information and/or Subcontractor Directory), reflecting the substitution and replacement subcontractor.

**9821.05 DISABLED VETERAN BUSINESS ENTERPRISES (DVBE) PARTICIPATION REQUIRED:
SUBSTITUTION OF A DVBE SUBCONTRACTOR**

After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in their bid to the state unless a substitution is requested and is approved by the Trustees and the Department of General Services (DGS). A DVBE subcontractor may only be replaced by another DVBE

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subcontractor. Trustees will document changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid by contract change order, and will provide their decision on DVBE substitutions in writing in accordance with Public Contract Code section 4100 *et seq.*

If contractor requests substitution of a DVBE subcontractor(s) proposed in its bid, construction administrator shall follow all of the procedures listed above, in accordance with Public Contract Code section 4100 *et seq.* Once the substitution has been approved and the campus level, the construction administrator shall then download and complete the DGS Substitution Form and Instructions from the following web site below:

<http://www.documents.dgs.ca.gov/pd/dvbe/DVBE%20Substitution%20Form%20and%20Instructions.xls>

Construction administrator shall then submit it with all relevant attachments to DGS by emailing the form and attachments to OSDSHelp@dgs.ca.gov, referencing "DVBE Substitution" in the subject line. Only submit requests to approve substitution by another DVBE subcontractor; DGS approval is not required if the Trustees deny DVBE substitution requests.

DGS will send written approval or denial to the SB/DVBE Advocate and Contracting Official as identified on the DGS Substitution Form. Construction administrator will then notify the contractor and DVBE subcontractor(s).

9822 USE OF LISTED SUBCONTRACTORS

If a prime contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of work, and the work is valued greater than one half of one percent of the contract, then the prime contractor must perform that work (Public Contract Code section 4106). No subcontractor may be employed by the prime contractor to perform the work. No substitution is allowed. The construction administrator should provide a copy of the Subcontractor Directory to the project manager/construction inspector, who shall verify subcontractors reporting to the project are listed on the directory, and report subcontractors not included on the directory to the construction administrator.

If the project is a design-build project, the proposer is not obligated to submit a List of Proposed Subcontractors with its bid, but rather, as soon as subcontractors are selected. Once the subcontractors are selected the design-builder shall add their names to the List of Subcontractors - Additional Information and submit it to the construction administrator. Additionally, the construction administrator may review the inspector of record's daily log to determine which subcontractors are working on the job.

The construction administrator is required to police the use of subcontractors. The contractor shall submit the subcontractor directory at award of contract and with each payment request. The construction administrator shall then compare each subcontractor directory with the version submitted previously. If any listed firms have been substituted without approval in accordance with Public Contract Code section 4107(a) (SUAM section 9821), penalties are applicable per Public Contract Code section 4110 (SUAM section 9823). Note that if a contractor claimed the non-small business bidding preference, it must substitute a small business with another small business. Please refer to the California Code of Regulations, Title 2 section 1896 *et seq.* for further information.

**9823 PENALTY FOR VIOLATION OF THE PROVISIONS OF THE
SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT**

The penalty for violating the provisions of the Subletting and Subcontracting Fair Practices Act is canceling the contract or assessing a penalty of not more than ten percent of the subcontract issued (Public Contract Code section 4110). The penalty, while not more than ten percent, must be no less than \$1.00. The construction administrator may consult with the CPDC's chief of construction management to determine the amount of penalty required for the violation. Notification of assessment of penalty shall be given and, if requested, a public hearing held. If a penalty in the amount of ten percent of the subcontract is assessed, the monies remain in the project funds. If the violation is egregious, then this may be used as a basis of disqualification to bid future work for the Trustees (delist prequalification). Again, notification needs to be issued (at least five days prior to the hearing) and the opportunity for a disqualification hearing allowed.

9824 PREVAILING WAGE RATES, CERTIFIED PAYROLL

Payment of prevailing rate wages is required on all public works projects in excess of \$1,000 per section 1771 of the Labor Code, and Section 1771 is applicable only to work performed under contract, and is not applicable to work

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carried out by the Trustees with its own forces. There are penalties for failing to pay prevailing rate wages as addressed in Section 1775 of the Labor Code. Per section 1776 of the Labor Code each contractor and subcontractor are required to keep accurate payroll records showing the identity of the worker, classification, hours worked, and actual per diem wages paid. Each contractor and subcontractor shall certify each payroll record by a declaration under penalty of perjury.

9824.01 CSU REQUEST FOR CERTIFIED PAYROLL

The construction administrator shall request a minimum of the first week's certified payroll records from the general contractor and a minimum of the first week's certified payroll records from each subcontractor of any tier. Requesting certified payroll for all work from start to finish or for a specified shorter duration is an option available. Additionally the contractor shall submit to the construction administrator the Hourly Labor Rate Worksheet for its entire payroll as well as for all of its subcontractors. Having certified payroll records, along with the Hourly Labor Rate Worksheet, will allow verification of payment of prevailing wage rates and will allow a check on wage rates submitted for change order work. For minor and special repair projects only, that have a total contract value under \$20,000, requesting certified payroll records is optional.

For projects that are federally-funded and for which the funding source requires application of the Davis-Bacon Act, construction administrator shall request certified payroll for all work from project start to finish, a requirement of the Davis-Bacon Act. Construction administrator shall confirm this requirement by reviewing the contract requirements of the project's federal funding source.

9824.02 OTHER REQUESTS FOR CERTIFIED PAYROLL

If the construction administrator receives a request from the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards or the public (often a Union) for certified payroll records for a contractor or a subcontractor, the construction administrator should forward the request, along with a certified letter to the prime contractor. Although a request may refer to a subcontractor's payroll records, the request must be forwarded to the prime contractor. Such request is only sent to the contractor if you do not have complete records per SUAM section 9824.01.

The contractor will preferably send the information directly to the requester or make the records available for inspection by the requesting party. However, if the payroll records are sent to the construction administrator, the construction administrator must forward the information to the requester (or make them available for inspection by requesting party), after ensuring individuals' names, addresses, and social security numbers (as appropriate) are redacted in accordance with Labor Code section 1776(e).

If a joint labor-management committee established pursuant to federal law requests certified payroll records, the contractor (or construction administrator) shall not obliterate any information on the employee payroll records except the employee's name and social security number (see Labor Code section 1776). Copies provided in response to any other request from the public shall have employee's name, address and social security number obliterated prior to dissemination.

Per California Code of Regulations, Title 8, Section 16204, the Trustees (or any contractor or subcontractor complying with a request for copies of certified payroll) may request reimbursement from the requesting party \$1.00 for the first page and \$.25 for each page thereafter, plus \$10.00 for handling costs. Payment shall be made in the form of cash, check or certified money order, and shall be received prior to the release of the documents. Note charges for copies of documents other than certified payroll shall be \$.20 per page in compliance with SUAM section 9825. These charges do not apply to requests from the Department of Industrial Relations, Division of Labor Standards Enforcement and the Division of Apprenticeship Standards for copies of documents.

9824.03 CSU LABOR COMPLIANCE PROGRAM

The Trustees have implemented a labor compliance program for projects funded from either:

- the Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004 in which construction starts on or after April 1, 2003, or
- State-issued bonds such as general obligation or lease revenue bonds (systemwide revenue bonds are not considered State-issued bonds), in which the contract starts on or after August 1, 2010.

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The Department of Industrial Relations will not be administering labor compliance for these projects; instead, the Labor Compliance Unit in CPDC will do so.

In accordance with Labor Code section 1771.5, the Trustees shall not require payment of prevailing wage rates for any public works project of \$25,000 or less if the scope of the project is for construction work, and \$15,000 or less when the project is for alteration, demolition, repair, or maintenance work.

For all other projects funded from these bonds, the Trustees will perform the following:

1. Insert appropriate language concerning the requirements of this chapter of the Labor Code into all bid invitations and public works contracts.
2. At the preconstruction conference for each project, the Trustees shall orient the contractors and subcontractors to the requirements of the Trustees' labor compliance program, including the required online submission of certified payroll data for the project into a web-based database.
3. The construction administrator and CPDC Labor Compliance Officer shall then monitor the contractor's and all subcontractors' certified payrolls for the project and enforce prevailing wage compliance.
4. Representatives from the Trustees' Labor Compliance Unit will visit the campus at least monthly to audit the certified payrolls for compliance with the law.
5. The Labor Compliance Officer in CPDC shall notify the contractor or subcontractor via certified mail with a copy to the bonding company and the University construction administrator, describing the nature of any violation and the amount of wages, penalties, and forfeitures withheld, and shall advise the contractor or subcontractor of the procedure for obtaining review of the withholding of contract payments.
6. The Trustees shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after the investigation, it is established that underpayment has occurred.
7. Once the Labor Compliance Officer in CPDC has established that underpayment has occurred, he/she shall provide a notice to the University construction administrator to remit funds to CPDC.
8. From the amount recovered, the Labor Compliance Officer shall satisfy the wage claim prior to the application of the amount towards penalties. If insufficient money is recovered to pay each worker in full, the Labor Compliance Officer shall prorate the money among all workers. After payment to the workers, the Labor Compliance Officer shall deposit the balance of the monies into a CPDC trust account used to defray the costs of the CSU Labor Compliance Program. Wages for workers who cannot be located shall be placed in the unpaid wage trust fund. Penalties shall be paid or deposited into the General Fund.

Complaints regarding nonpayment of prevailing wage rates shall be forwarded to the Labor Compliance Office in CPDC for investigation.

9825 REQUESTS FOR DOCUMENTS

Occasionally, requests for documents regarding the project are made under the California Public Records Act (Government Code section 6250 *et seq.*). Most documents concerning the project are considered public records. Requests for these records must be honored according to the process identified in the Act. That process requires a response back to the requester of the public record(s) within ten days of receipt, in which the requester must be informed whether the request will be honored, and if not, the legal basis for the refusal. If the request will be honored the letter should state that as soon as the records are identified, the "direct costs of duplication" will be communicated, and upon receipt of the money to pay for duplication, the records will be copied and sent. The Act does not require the public agency to create records where none exist. Thus requests for information not included in an existing record may be denied. Prequalification applications (questionnaires and financial statements) are not public records and are not open to public inspection, in accordance with Public Contract Code section 10763. Other records submitted or prepared in connection with the prequalification process or award of a contract may be exempt from disclosure or subject to redaction of protected information under the Public Records Act. Check with your University counsel regarding such exemptions or the need for redaction. CPDC policy is to comply with sending a small number of copies from its files. The construction administrator may, instead, open the project files for inspection (if not confidential) and copying by the requester. Trustees' policy is to charge \$.20 per page.

9826 FAILURE TO PROSECUTE WORK (FAILURE TO PERFORM)

If the construction administration team determines that a contractor has failed to provide an adequate working force or material of proper quality or has failed to perform the work with due diligence and force specified in the contract, the construction administrator may, pursuant to Public Contract Code section 10843, take one of the following

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actions.

- Give written notice of at least five calendar days to the contractor specifying the defaults to be remedied. If the contractor fails to perform within the time specified in the notice, the Trustees may provide any necessary labor or materials and deduct the cost from any money due or to become due the contractor under the contract.
- Give written notice of at least five calendar days to the contractor and the contractor's performance bond surety that the contractor's control over the work will be terminated if the defaults are not corrected within the time specified in the notice (if the construction administration team considers the failure sufficient grounds for such action).

Notices should be served on the contractor personally or by registered mail (return receipt requested).

If the contractor is not diligently pursuing project closeout, including the completion of punch list items, please refer to Section 9830.01.

9826.01 TERMINATION OF CONTRACT

If the defaults are not remedied within the time specified in the notice, the contract shall terminate as of the expiration of that time (Public Contract Code section 10844). Upon termination of the contract, the construction administrator may take possession of and use all or any part of the contractor's materials, tools, and equipment at the job site in order to complete the contract. If a performance bond has been filed on the project, the construction administrator may permit the surety to complete or cause the contract to be completed. Whether or not a performance bond has been filed, the construction administrator may direct that all or any part of the work be completed by day labor or by employment of other contractors upon informal contracts, or both (Public Contract Code sections 10844 and 10845).

9827 AWARDING INFORMAL CONTRACTS AFTER TERMINATION

Informal contracts, noted above, may be awarded only after a proposal form has been prepared, a copy served upon the contractor whose control has been terminated and upon that contractor's surety, and after at least three working days so that others can bid (Public Contract Code section 10846). Bidding documents should be sent to all contractors who had bid on the initial project.

9830 CONTRACT COMPLETION AND ACCEPTANCE OF CONSTRUCTION

The following sections outline the procedure for inspection and acceptance of completed contract work.

9830.01 PREFINAL INSPECTION OF CONSTRUCTION

When construction appears to be finished, the design professional is responsible for scheduling a pre-final inspection of the work to ascertain that it has been completed according to the plans and specifications. The inspection is conducted by the construction administrator assisted by the design professional, the campus representative, the contractor, the project manager/construction inspector, and the design professional's consultants including the landscape design professional, mechanical engineer, and electrical engineer or equivalent.

Any deviations or delinquencies in the work are noted on a punch list. Copies of this form are given to the contractor as directives in completing the project. Each project must be reviewed on an individual basis, but on average, any punch list should be addressed/completed within two months of the issuance of the complete and detailed punch list. If the contractor has not diligently pursued and completed the punch list within this time frame, the construction administrator should review the necessity to issue a Public Contract Code section 10843-a notice to the contractor, reference Section 9826. When it is judged that all the items on the punch list have been corrected or completed, the final inspection is scheduled by the design professional.

All instructions required for operation and maintenance of the equipment to be installed also must be given to the campus representative by the contractor's personnel, through the design professional, before the final inspection is scheduled.

9830.02 OCCUPANCY PRIOR TO ACCEPTANCE

The Trustees reserve the right to occupy all or any part of a project prior to completion of the entire contract (Contract General Conditions for Design-Bid-Build Major Projects, Article 4.09). In this event, the construction

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administrator shall issue a field instruction to the contractor, noticing the contractor that the campus will be taking beneficial occupancy of all or portions of the project on a specific date at a specific time. A change order must be executed which will document the date, liability, and start of warranty (if appropriate).

Occasionally, construction contracts have milestones, either stated as specific dates or durations, where liquidated damages are applicable if a contractor fails to perform the scope of work by the respective milestone (date). It is important to document all beneficial occupancy of contracted work in accordance with the contract documents.

9830.03 FINAL INSPECTION OF CONSTRUCTION

The final inspection must occur after the items listed on the punch list have been corrected. The same parties who conducted the pre-final inspection shall make the final inspection. At this time, the construction work and the equipment installed must be complete and in accordance with all plans, specifications, and contract change orders.

Both the design professional and the project manager/construction inspector are required to submit a statement in writing to the construction administrator that the project complies with all plans, specifications, and change orders. The campus also is required to submit a written statement that the facility is in compliance with the contract documents and that it is free from apparent defects. When the project is judged 100 percent complete, the construction administrator so certifies and then instructs the contractor to submit a 100 percent completion payment request and the record drawings completed during the progress of the work along with all remaining turnover items. Refer to the Project Closeout Checklist.

9830.04 NOTICE OF COMPLETION OF CONTRACT

Upon completion, the construction administrator files a Notice of Completion, Form 702.02, with the County Recorder of the county where the project is located. The Notice of Completion must be filed in the County Recorder's office within fifteen calendar days of completion per Civil Code section 9204; however, CPDC policy is that the construction administrator continue to file the notice within ten days. The recordation date on the notice of completion (when timely filed) establishes the 30 days period in which stop payment notices must be filed (Civil Code section 9356). If a Notice of Completion is not recorded timely, the period for filing stop payment notices is extended to 90 days from completion. The campus may occupy the facility immediately after acceptance or take earlier prior occupancy in accordance with the provisions in the Contract General Conditions.

The Notice shall contain the following information:

- the date of completion of the contract for public work;
- the name and complete address of the campus;
- contract number, project number (if different from contract number) and title;
- name and complete physical address of the contractor;
- name and complete physical address of the design professional/engineer;
- a description of the site sufficient for identification and a general statement of the kind of work performed.

The construction administrator shall sign the Notice of Completion under penalty of perjury.

The Notice of Completion should be submitted to the County Recorder in person or by certified mail or overnight delivery service. General Counsel recommends hand carrying this document on the day of acceptance or the day after acceptance to the County Recorder's office for recordation to assure timely recordation. To avoid filing charges, the cover letter should state: "It is our understanding that in accordance with Section 27383 of the Government Code, 'No fee shall be charged by the recorder for services rendered to the state...'"

It is in the best interest of the state to file a Notice of Completion (or a Notice of Cessation) on all contracts for public work as soon as possible after acceptance of the project. The Notice protects the state by limiting the period during which stop payment notices may be filed.

9830.05 NOTICE OF CESSATION

The Notice of Cessation is a written notice, signed and verified by the construction administrator, that should be recorded in the Office of the County Recorder of the county in which the project site is located, and is effective only if there has been a continuous cessation of labor for at least thirty calendar days prior to recording (Civil Code section 9356). The Notice shall contain the following information:

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- the date on or about when the cessation of labor commenced,
- a statement that such cessation has continued until the recording of the Notice of Cessation,
- name and address of the campus,
- a description of the site sufficient for identification,
- the name of the original contractor.

The construction administrator shall sign the Notice of Cessation under penalty of perjury. The Notice of Cessation shall be filed with the County Recorder in the same manner as the Notice of Completion. This may be a rare occurrence when a contractor abandons a project without completing the work, but statutes address this to protect the rights of interested parties.

9831 ITEMS TO COMPLETE

Items to Complete (called ITCs) are defined as work to be accomplished to complete a facility in order that it effectively fulfills its purpose without a change in scope. ITCs differ from project change orders, in that they are usually discovered too late in the construction phase to be accomplished without delaying the completion of the project. ITCs may be necessary to satisfy safety requirements, and are often requirements of the fire marshal.

If at all possible, the work should be done under the construction contract. However, a contract shall not be held open past normal completion, and the construction administrator must avoid any action that will delay contractor's progress, and which could possibly form the basis for a delay claim against the Trustees.

Once items of work have been identified to complete the project, the construction administrator will authorize the encumbrance of funds from project savings (contingency balances). ITCs should be the highest priority when using project savings. If insufficient funds remain in the contingency balance, items of work will be completed in order of priority to the extent of funds available. Funds for this work must be encumbered prior to the funds' expiration date.

9832 FINAL DISPOSITION OF CONTRACT RECORDS

The construction administrator is responsible to retain the contract files for a minimum of five years for legal purposes. This completes the construction phase of the project.

Campus is responsible to preserve for future reference all record drawings of the finished construction. The campus representatives may use their discretion on the amount and type of other contract and construction correspondence and drawings to be retained from the project manager/ construction inspector. With some exceptions, the statute of limitations on latent defects is ten years after the date of the Notice of Completion. The campus shall retain project files for at least ten years. Campuses may store project files electronically, provided the files may be read at any time. Scanned files must contain clear copies of all signatures authorizing expenditures, invoices, contracts, etc.

For all projects funded with tax-exempt bonds, including general obligation, lease revenue, and systemwide revenue bonds, campus must demonstrate compliance with Internal Revenue Service tax codes and retain records related to private activity use for subleased areas and for federal research grants in campus facilities during the life of the tax-exempt bonds plus five years, typically a total of 35 years. For more information, campus shall review and follow SUAM IV section 9030.02.

9832.01 AS-BUILT DRAWINGS (RECORD DRAWINGS)

Timely submittal of as-built drawings is an important item for the University to police. It is often a late submittal by the contractor, which makes it a late submittal by the design professional. Funds are retained from both the contractor and the design professional until acceptable submittals have been accepted. The construction administrator should aggressively administer timely submittals of as-builts by both contracted entities.

9833 CLAIMS AGAINST THE CONTRACT

Claims for disputed work and contract time delay usually occur throughout the construction project. It is incumbent on the construction administrator to attempt to resolve all of these claims through timely negotiation and settlement whenever possible. However, at the end of a project, there may be unresolved claims, unresolved time overrun or the possible assessment of liquidated damages that the construction administrator should also attempt to resolve. Resolution usually requires a meeting where each of the open issues are discussed and resolved, based on contractual merit, if possible. Sometimes the construction administrator must use his/her judgment when issues are not 'black

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and white' contractually, and the resolution of claims by examination of equity is necessary when determined to be in the best interests of the state. The following sections describe the processes available for resolution of claims.

The construction administrator shall timely notify the contractor of the receipt of any third-party claim relating to the project (Public Contract Code section 9201).

9833.01 CLAIMS NEGOTIATIONS

For all contractor claims, the construction administrator is obliged to timely negotiate and settle these issues, if possible as soon as is practical. Often the construction administrator conducts a final review and negotiation session for contractor's claims, milestones, or at the completion of the project in an attempt to resolve any hard costs associated with changed work and to address the merits of a contractor's claim(s). Time overrun is also often addressed, and any merits for time extension may be negotiated with interim or final claims. This process minimizes the cost of contract closeout and avoids the possibility of excessive costs, if the recommendations of the Contractor's Claims Review Board are rejected and litigation is started. The following guidelines are intended to assist the construction administrator in claims negotiation:

1. Whenever possible, conduct the interim and final closeout claims negotiation meeting at the job site in case you need to inspect the installation, if appropriate. Assemble the appropriate parties including the contractor (project manager and superintendent), architect, engineering consultant (if appropriate), campus representatives, project manager, construction inspector, and the construction administrator. If the claims include expensive cost items or delay damages, then the executive facility officer/vice president should be included. CPDC Construction Management staff may also be included in a consulting role, and on projects that are covered by the Construction Claims Risk Pool, one must be included, if the Risk Pool will be asked to pay any part of the claim.
2. The meeting may be held in two phases, the first with all parties except the contractor. This will allow consensus of opinion to be reached or at least some guidelines laid down which the construction administrator may use to negotiate with the contractor. The second meeting includes the contractor and should be led by the construction administrator, who should negotiate in accordance with the guidelines. If further discussion among the team is needed, a breakout session should be held so that, again, all parties except the contractor can reach an agreement. It is important that the final completion date and any resultant liquidated damages should be negotiated and approved by all parties, if possible.
3. Memorialize the meeting and settlement, if any, with a letter, memo, or some form of complete back-up (including costs), and a complete change proposal that indicates concurrence by the architect and campus representative. If the architect was not a party to the claim then he or she may be excluded.
4. The executive facility officer or appropriate campus official must sign the resultant change proposal or justification document, demonstrating concurrence with the settlement. As the construction administrator's role is to negotiate the best possible settlement in good faith, and to get approval as appropriate, the construction administrator should be prepared to explain the merits of the claims and settlement, if appropriate, to the executive facility officer or appropriate campus official.
5. Should the executive facility officer fail to concur with the proposed settlement, then he or she may personally become involved in a revised settlement negotiation. The executive facility officer may wish to enlist the services of CPDC Construction Management staff to help negotiate the claims. If negotiations fail, the matter will be referred to a Contractor's Claims Review Board hearing.
6. On any resultant change order, include language that indicates that the included items (claims) on that change order were negotiated and settled, with the date.
7. If the resultant settlement resolved all claims under the project, then so state. General Counsel has provided language to include for this purpose (see Settlement Change Order, Appendix D). Refer to 9820.03 for more information.
8. If a time extension is negotiated for appropriate purposes, then so state.
9. If there is a time overrun that has not been extended, then assess liquidated damages.

9833.02 CLAIMS REVIEW BOARD

If a contractor's claim occurs and was not resolved through negotiations between the contract administrator and the contractor, then an official hearing may be scheduled following the completion of all work and acceptance of the project. The hearing is scheduled after completion so that only one such hearing will be held for a given project. The hearing shall be relatively formal and structured but without legal counsel. The results will be in writing and

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transmitted formally by the campus vice president of administration or the assistant vice chancellor of CPDC if CPDC administered the project.

CPDC has two written procedures for administering a Contractor's Claims Review Board hearing. Part I of these procedures describes the process for filing a claim and describes the Claims Review Board process and may be shared with the contractor. Part II is an internal document that describes the duties of the Board participants, and should not be shared with the contractor. It is important to have three members on the Board who have a good working knowledge of construction and the CSU Contract General Conditions. It is also important to have a neutral board who has not been involved with the project or decisions leading to the claim(s). This may be difficult for a campus-administered project without relying on CPDC or other campuses to compose a neutral board. Written claims review board procedures have been prepared for campus or CPDC application. They propose composing a board with CPDC professional staff and campus staff, as necessary, to result in an appropriately composed, neutral board. On projects that are covered by the Construction Claims Risk Pool, CPDC Construction Management staff will chair the board (however staff not involved in the negotiation process described in 9833.01). Refer to Appendix D for Claims Review Board Procedures, Parts I and II (Contract General Conditions Articles 5.02 and 7.01).

9833.03 PRE-LITIGATION REVIEW/SETTLEMENT

If contractor does not accept the recommendations of the Claims Review Board, and subsequent negotiations fail, the vice president of administration will document the process in a memorandum to general counsel, under confidential, attorney-client privilege. General counsel shall notify CPDC's assistant vice chancellor under this same confidential, attorney-client privilege.

Should the contractor subsequently file a lawsuit, general counsel will notify the chancellor. In a pre-trial settlement hearing (court-ordered mediation), the vice president of administration and general counsel will attempt to negotiate settlement, and the chancellor shall approve all settlement offers exceeding \$500,000. Campus or counsel may wish to involve CPDC's chief of construction management.

9833.04 CONSTRUCTION CLAIMS PROGRAM

Campuses may submit a request to the Construction Claims Program Committee (CCPC) for funding of a contractor claim under specific conditions. Refer to CPDC's university planner for the Construction Claims Program Policy and Procedure.

9834 FINAL RETENTION PAYMENT OF CONTRACT

Final payment of the retained portion of the contract cost can be made only when the following conditions are met:

1. if there are no stop payment notices against the contractor,
2. thirty calendar days have elapsed after the project Notice of Completion has been filed and timely recorded (within ten days of completion) in the office of the County Recorder, and
3. after a final payment request is made by the contractor.

If stop payment notices have been served upon the Trustees and have not been released, amounts sufficient to answer the claim stated in the stop payment notices and to provide for the reasonable cost of any litigation thereunder (125 percent of the claim) shall be withheld from the final payment until such time as the stop payment notices have been released or the time expires according to law (Civil Code section 9358).

For uncompleted warranty items, a sum equal to 150 percent of the cost of performing the work will be withheld as estimated until such time as the work has been completed (Public Contract Code section 7107(c)).

It is important to process the contractor's final payment request (retention payment) timely. Refer to SUAM section 9803 for applicable statutes governing prompt payment of progress billings. In addition, Public Contract Code section 7107 contains requirements that specifically address timely payment of retention. Section 7107(c) requires release of retention within 60 days of completion. The statute then defined completion with four different meanings, reprinted below for your convenience.

"For purposes of this subdivision, "completion" means any of the following:

- (1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

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- (2) The acceptance by the public agency, or its agent, of the work of improvement.
- (3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.
- (4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

Number (2) is the only meaning that is consistent with Public Contract Code section 10851 (regarding completion and release of retention), which contained in the California State University Contract Law and not a generic requirement, and is also consistent with the Contract General Conditions. That specifically addresses acceptance of the project as complete.

The construction administrator should be aware of the other three meanings of completion by reviewing the statute. They all involve a cessation of labor, but do not address final completion of the work.

Section 7107(f) addresses a potential charge of two percent per month that may be assessed against a public entity for not making timely payments in accordance with the provisions in the section. Therefore, if the retention payment is processed at the end of the 30 days lien period following recordation of the Notice of Completion, this statute should easily be complied with providing the “release” of retainage has occurred within 60 days from the date of acceptance as complete. This requires very timely handling of both the recordation and the processing of the final payment that is the intent of both applicable statutes.

9834.01 FINAL PAYMENT FOR MINOR CAPITAL OUTLAY

The Contract General Conditions for Design-Bid-Build Minor Projects provide that the campus will pay the contractor the retention balance upon completion of the work satisfactory to the campus. This amount will be withheld for thirty calendar days following the proper filing of the Notice of Completion. The purpose of this retention is to satisfy any potential claims for labor or materials that may occur through the filing of a stop payment notice during this thirty-day period. The campus has up to sixty days after the date of completion of the work to release undisputed retention proceeds (Public Contract Code section 7107(c)).

9834.02 VERIFICATION OF DISABLED VETERAN BUSINESS ENTERPRISES PARTICIPATION

At end of project and before Trustees’ release of all retention, Contractor must submit a Disabled Veteran Business Enterprise Subcontractor Activity Report (form DVBE-AR) to the Trustees, certifying the following:

1. the total amount Contractor received from the Trustees under the Contract.
2. the name and address of the DVBE(s) that participated in the performance of the Contract.
3. the amount each DVBE received from the Contractor.
4. that all payments under the Contract have been made to the DVBEs; and
5. the actual percentage of DVBE participation that was achieved for this Contract.

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in accordance with Military and Veterans Code section 999.5(d).

Trustees shall keep this certification on file with the contract documents.

9835 EVALUATION OF CONTRACTOR PERFORMANCE

University administrators will provide a valuable service to the CSU system by filing the Contractor Performance Evaluation form (for major projects and for job order contracts) and the Non-Responsible Contractor Evaluation form (for minor projects) when appropriate. This information will aid the Trustees in improving the bidder pool and eliminating the non-responsible contractors from continuing to bid CSU work. The construction administrator shall establish a written record of contractor performance on each major capital outlay contract. For minor capital outlay projects on which the contractor has failed to responsibly fulfill the contract, the construction administrator shall provide written documentation. The documentation for minor projects and record of performance for major projects must be sufficiently detailed to inform the contractor of the precise nature of the poor performance and enable the CSU to establish the substantiated activity in a hearing against the objection of the contractor.

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9835.01 EVALUATION OF CONTRACTOR ON A MAJOR PROJECT

A Contractor Performance Evaluation Form (see Appendix D) must be prepared on all contracts where the total cost exceeds the value of a minor capital outlay project pursuant to Public Contract Code section 10108. The person preparing the report (the evaluator) should be an individual with direct knowledge of the contractor's performance, likely the construction administrator. The report shall be submitted to the prequalification coordinator in CPDC for filing with the contractor's prequalification records for future reference. This information shall be used by the prequalification coordinator in determining whether a current prequalification should be reduced or rescinded and when reviewing the contractor's application for renewal of prequalification. It may be the basis for reduction of prequalification, disqualification, or non-renewal, or it may be used as a reference for an increase in prequalification rating. Also, a summary of the data provided on this evaluation form shall become part of an annual report presented to the Trustees.

9835.02 FAILURE TO MEET TERMS OF CONTRACT ON A MINOR PROJECT

If the University determines that the contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified in the contract, it may take any of the actions authorized in Public Contract Code section 10843 *et seq.* The contractor's failure to complete a punch list with diligence is an example of such failure to meet the terms of the contract.

If the contractor fails to perform the construction contract responsibly by failing to complete all work and requirements, including honoring the warranty, the construction administrator shall prepare a Non-Responsible Contractor Evaluation (see Appendix D). The construction administrator may wish to have a campus legal counsel review the evaluation document before finalizing inasmuch as that document may be the basis for a hearing with the contractor and the campus.

Prior to filing the Non-Responsible Contractor Evaluation with the CPDC, the construction administrator will send the contractor a copy of the Non-Responsible Contractor Evaluation and provide the contractor an opportunity for a hearing. The hearing shall be informal, and may be conducted in whole or in part in writing by an individual who has not been involved with the performance of the contractor, and who is appointed by the University to hear the matter. The contractor shall be given the opportunity to rebut the accuracy of the evaluation document. After reviewing the evidence, the hearing officer shall submit a decision concerning the contractor's responsibility in writing, with a copy mailed to the contractor.

If the University's hearing officer determines that the contractor was not responsible in the performance of CSU work, the construction administrator shall file the Non-Responsible Contractor Evaluation Form with CPDC. This report shall be forwarded to the prequalification coordinator in CPDC, with the result that the contractor will not be prequalified or eligible to bid on CSU work. The contractor shall be added to a listing of such results that is posted under Construction Management, on the CPDC website, www.calstate.edu/CPDC, for access by all campus administrators.

9835.03 EVALUATION OF CONTRACTOR ON A JOB ORDER CONTRACT

A Contractor Evaluation shall be filed with the Trustees in accordance with Article 9.06 of the Contract General Conditions for Job Order Contracts. This is particularly important due to the poor performance experienced by some campuses and the resultant desire to not award another contract to a contractor that has failed to perform as a responsible contractor. Consequently it may be appropriate to submit an evaluation prior to completion of the job order contract and at a time when non-responsible performance has been established. Non-responsible performance is based upon the contractor's failure to honor the contract and perform as a responsible contractor as defined (refer to Article 2.10 of the Contract General Conditions which further references Public Contract Code section 1103). In accordance with Article 3.01 of the Contract General Conditions, award of a contract is to the lowest responsible bidder. A bidder (contractor) found to be non-responsible would then be ineligible for award. Timely submittal of the Contractor Evaluation to the Trustees aids in the prequalification of bidders process.

9836 PROJECT PERFORMANCE REPORT

For all major capital outlay projects, the construction administrator for the project shall submit a Project Performance Report, in compliance with the requirements of Executive Order No. 672 and SUAM I, section 9002. The Project Performance Report shall be submitted within 60 days of the filing of the Notice of Completion.

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The Project Performance Report shall be comprised of the Project Performance Report Questionnaire, the Project Data Entry Workbook, and Required Documentation as itemized in the Project Performance Report Instructions. Access the Project Performance Report documents (Project Performance Report Instructions, Project Performance Report Questionnaire, and Project Data Entry Workbook) on the web at <http://www.calstate.edu/cpdc/cm/forms/>.

**9840 PHASE III:
GUARANTEE OF CONSTRUCTION AND EQUIPMENT FOR PUBLIC WORKS PROJECTS**

The guarantee and deficiency correction period commences with the filing of the contract Notice of Completion. During this phase, Construction Management must rely on the campus for information concerning the performance of the facility if any action is to be taken by Construction Management to enforce the guarantee requirements of the contract.

9841 LENGTH OF GUARANTEE PERIOD

Each public works contract awarded by the Trustees has a guarantee period of one year, during which time the performance bond is in force. Certain individual items of work or equipment have longer guarantee periods. During the guarantee period, the campus is responsible to police the facility for malfunctions. The contractor is notified of all items judged to be the contractor's responsibility and is issued in writing a Notice to Perform. In an emergency, such as the failure of a critical piece of equipment, the campus should contact the contractor by telephone. The contractor and individual subcontractors usually will honor their guarantee when notified of a deficiency, directly from the campus, but Construction Management will help when requested by campus.

9842 PERFORMANCE AUDIT AND CLOSE OF GUARANTEE PERIOD

Official representatives of the campus should conduct inspections of a facility throughout the warranty period to audit the quality of the contractor's work. All items listed by the campus, including those repaired or corrected by the contractor, must be examined. Identification of any deficiencies noted must be transmitted to the contractor together with a Notice to Perform prior to the expiration of the guarantee period.

9843 LATENT DEFECTS

Even after the warranty period has expired, the contractor and its performance bond surety are still obliged to correct latent defects. This obligation extends for ten years after completion of the project. The Code of Civil Procedure, Section 337.15 defines "latent deficiency" as a deficiency that is not apparent by reasonable inspection.

No action may be brought to recover damages from any person or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than ten years after the completion of the development or improvement (Code of Civil Procedure, Section 337.15(a)).

The ten-year period specified shall commence upon completion of the improvement, but not later than the date of one of the following, whichever first occurs: 1) the date of final inspection by the public agency; 2) the date of recordation of a valid notice of completion; 3) the date of use or occupation of the improvement; 4) one year after termination or cessation of work on the improvement (Code of Civil Procedure, Section 337.15(g)).

During this ten-year period, the campus must file a lawsuit in the proper court to avoid the running of the limitations period which would bar the lawsuit. Also if the defect is discovered in the first six years of the ten-year period, the campus has four years from the date of discovery to file a lawsuit to avoid the running of the limitations period (Code of Civil Procedure, Section 337). The contractor and individual subcontractors usually will correct the problem when notified of a latent deficiency directly from the campus, but the construction administrator will officially take the lead when requested by the campus.