

EJCDC Procurement Series – 2019

Changes from the 2010 edition

The Engineers Joint Contract Documents Committee (EJCDC) Procurement Documents (P-Series) are intended for use when a Project Owner, as “Buyer,” purchases engineered equipment, systems, or materials (“Goods”) directly from a Seller, for use on an Engineer-designed Project. The P-Series documents are predicated on the assumption that the Project Owner, or a construction contractor retained by the Project Owner, will receive, unload, perhaps store, and later install the Goods furnished by the Seller under the Procurement Contract. The P-Series documents are not intended for use when the manufacturer or supplier furnishing the materials or equipment is also required to install the Goods.

The term “Procurement” as used by EJCDC refers to the purchase of Goods (typically equipment or systems that will be installed in a facility, or in some cases construction materials) and related Special Services. The purchaser (“Buyer”) is the Project Owner; and in most cases such a purchase will be initiated in the early stages of a project, before the overall design is complete and before the Project Owner has selected and brought a construction contractor under contract. The Seller will be either a manufacturer or a vendor/supplier.

In many cases the Project Owner will enter into a construction contract after the Procurement Contract is already underway. In such cases it is common for the Project Owner to assign the Procurement Contract to the construction contractor (“Contractor/Assignee”), which then takes on the rights and responsibilities of Buyer under the Procurement Contract. The Procurement Series documents provide language for that option.

These documents give project owners a viable alternative to accepting purchase orders, purchase acceptance forms, and purchase contract terms and conditions drafted by manufacturers and suppliers. EJCDC has drafted the 2019 P-Series Documents with clear, fair, complete, and detailed provisions governing the rights, responsibilities, and procedures for procurement contracts for engineered equipment and materials.

The 2019 P-Series Documents are well suited to a wide variety of purchase transactions, especially those where the materials or equipment are of a complex or critical nature. EJCDC documents are comprehensive in their coverage of relevant topics and issues typical on the associated type of contract.

The EJCDC Procurement Series of documents provides the user with forms and documents for obtaining bids from prospective Sellers, and for establishing the Procurement Contract itself.

All the documents have been updated to EJCDC’s new formats with Guidelines and Guidance Notes throughout. The 2019 documents are compatible with the current (2018) edition of the EJCDC Construction Series. When appropriate, the P-Series documents use the same or similar terminology, wording, and organization as the Construction Series.

The same fundamental relationship between Buyer and Seller established in the 2010 edition of the Procurement documents has been maintained, and the role of Engineer in situations in which the Procurement Contract is assigned to a construction contractor has been clarified.

P-050 Project Owner’s Instructions Regarding Procurement Documents (New Document)

- These Instructions are given by Project Owner to Engineer (or other representative of Project Owner), for purposes of preparing the Procurement bidding and contract documents for a specific purchase
- Provides owners with a detailed framework for giving instructions regarding basic project information; documents to be used; Engineer’s role; bidding (Seller selection) procedures and schedule; Procurement contract contents and schedule; payment provisions; and bond and insurance provisions
- Allows Project Owner to optimize the bidding and purchase contract process
- Unlike the parallel Construction Series document, EJCDC® C-050, this document includes bond and insurance discussion, eliminating the need for separate insurance and bond documents similar to C-051 and C-052

P-200 Instructions to Bidders for Procurement Contract

- Recommends, but does not require, that Bidders visit the Point of Destination (to which the Goods must be delivered) and the site where the Goods are to be installed and Special Services are to be provided, to become familiar with local conditions that may affect the delivery, cost, progress, and furnishing of the Goods and Special Services
- Provides guidance regarding qualifications of Bidders, pointing out that qualifications are not needed from manufacturers that already have been identified as sources in the Procurement Specifications
- Includes new Article 10, Confidentiality of Bidding Information—confidentiality clauses to protect Bidder’s proprietary data
- Includes an optional instruction for bids that combine lump sum and unit prices
- Clarifies that Buyer’s Contingency Allowance, if any, is not a factor in determining low bids
- Establishes, as a standard provision, that the Procurement Contract will be awarded to the responsible bidder submitting the lowest responsive bid. Previous standard was an award “in the best interest of the Project.”

P-400 Bid Form for Procurement Contract

- Includes clarification on the way the Buyer’s contingency allowance is handled
- Representations and Certifications moved to Article 6
- Eliminates representation regarding Bidder’s examination of “related data”—usually not relevant to a procurement contract. Examination requirement limited to the Procurement Contract Documents.

P-520 Agreement Between Buyer and Seller for Procurement Contract

- Added more flexibility for establishing milestones, and for scheduling payments
- Similar to the Instructions to Bidders, P-200, and the Bid Form, P-400, this document clarifies how the Buyer's contingency allowance is handled
- Added distinction between "Total Price" (includes Buyer's Contingency Allowance) and "Contract Price" (lump sum and unit price amounts—does not include contingencies)
- Provides for flexibility in payment terms
- Comprehensively sets out the impact of an assignment of the Procurement Contract from Project Owner (as Buyer) to construction contractor (as Buyer). Defines responsibilities of construction contractor after an assignment
- Introduces two new terms: Project Owner and Contractor/Assignee
- Removes Engineer from direct involvement in administration of Procurement Contract after assignment to construction contractor
- Includes confidentiality language similar to what was added to Instructions to Bidders, but for information submitted by Contractor after a contract is executed
- Relocated optional limitation of liability clause from P-520 to P-800, Supplementary Conditions

P-610 and P-615 Performance and Payment Bonds

- These two bonds are very similar in content to the corresponding bonds in the C-Series. The basic content of the bonds was developed in a joint effort with AIA and others in 2009-10; the AIA version of the bond is A312 2010, Performance/Payment Bond.
- The Procurement versions of the bond use P-series nomenclature such as Buyer and Seller. This edition includes two new definitions, Point of Destination and Goods and Special Services. These terms were used in the previous published versions of the bonds, without express definitions.

P-625 Buyer's Acknowledgement of Receipt of Goods (New Document)

- Used to acknowledge delivery of the Goods to the Point of Destination
- Issued by Buyer after a visual inspection of the delivered Goods
- Establishes accomplishment of key milestone (delivery), allowing Seller to submit its application for payment for attaining that milestone
- Disclaimer states that the Acknowledgment of Receipt does not constitute acceptance of Goods that are not in conformance with the Procurement Contract Documents

P-626 Buyer's Notice Regarding Conformity of Goods and Special Services (New Document)

- Analogous to C-626, Notice of Acceptability, in the Construction Series
- This document serves as Buyer's written notice to the Seller that all the Goods and Special Services are completed and are in accordance with the Procurement Contract Documents. The form also may be used on a preliminary basis to give Seller formal

notice that the Goods and Special Services are non-conforming, with a list of deficiencies to be corrected

- EJCDC® P-626 reserves Buyer's rights with respect to latent defects and warranty obligations.

P-700 Standard General Conditions of the Procurement Contract

- Reorganized to be similar in layout to the Standard General Conditions of the Construction Contract, C-700 (2013 and 2018); e.g. new Articles such as Commencement and Schedule
- New definitions including: Submittal, Unit Price Goods and Special Services, Contractor/Assignee, and Project Owner
- Added "Procurement" ahead of terms such as "Agreement," "Contract," "Contract Documents," "Contract Price," "Contract Times," "Drawings," "Specifications," and others, to differentiate from the terms used in the construction documents
- Deleted the use of a Notice to Proceed
- Requires a schedule of submittals
- Updated the insurance provisions
- More attention to Seller's presence on site – insurance, safety, coordination and interference
- Provides for electronic documents and transmittals
- Eliminated the clauses regarding Delegated Design
- Clarified that Special Services, not just Goods can be non-conforming
- Upgraded delivery requirements and other provisions for consistency with current commercial law
- Provided more detail regarding operation of a Buyer's Contingency Allowance (if any)

P-800 Supplementary Conditions of the Procurement Contract

- Greatly expanded the Guidance Notes and Notes to User
- Discusses circumstances in which the parties may wish to adopt an electronic documents protocol (EDP), and refers the user to the EDP provisions in the Construction Supplementary Conditions, C-800
- Provides guidance regarding including a schedule of values (useful for complex procurements)
- Improves insurance and bond requirements, consistent with current standards
- Requires that Seller have Professional Liability insurance if the Special Services include professional services
- Provides guidance regarding listing, citing, or incorporating applicable laws and regulations
- Includes optional limitation of Seller's liability (limited to Procurement Contract Price) (relocated from P-520, Agreement)

- Provides guidance regarding final inspection, subsequent field inspections, and the one-year correction period
- Upgraded the optional arbitration provisions