

August 20, 2009

Frequently Asked Questions:

1. Can a public entity solicit bids and use a price in the selection screening process for CME services?

No. Under the PSPA, public entities must select CME engineers based on qualifications and demonstrated competence – not price. In fact, engineers cannot provide pricing information in the initial stages of selection without facing possible Board sanctions. However, once the most qualified CME provider is chosen, the public entity may negotiate a fair price for the work. If a price cannot be reached, the public entity may repeat the negotiations with the next most highly qualified provider of services until a contract is reached.

2. Can a public entity solicit bids and use a price in the selection screening process for CMT services?

Yes, but only if the CMT services meet two critical conditions:

- The provider's services must be clearly limited to collection of samples and performing tests defined by a professional engineer in the project specifications, and;
- The public entity's engineer who is competent in CME must also directly supervise any CMT.

The scope of services on a CMT activity is very narrow. For example, they cannot include engineering supervision services, provision of sealed reports, review and sealing of reports produced by others, or evaluation of test data. Some standard testing cannot be considered CMT because of its engineering components or if there are requirements for an engineer in the test procedure. The following elements are considered engineering and would be subject to the PSPA:

- Evaluation of CMT results for an acceptance or rejection decision is engineering.
- The testing services are CME when the owner does not provide an engineer for direct supervision of the construction phase.
- The testing services are CME when the provider submits the results of their work to the construction contractor for acceptance or rejection.

To ensure proper documentation, the Board recommends that the engineer responsible for receiving CMT results and making acceptance and rejection decisions be identified in project documentation.

3. Many public owners ask construction contractors to provide CME services. The results of the tests are submitted to the public owner. If the contractor elects to provide these services, what rules must be followed?

The contractor must follow the PSPA when acquiring CME under these circumstances. One of the reasons materials testing and engineering are conducted on public projects is to meet the requirements of Section 1001.407, Occupations Code. This section requires the public owner to ensure that a licensed engineer is directly supervising the engineering construction – including supervision of the acceptance testing. Engineers who are asked to provide CME services for acceptance purposes may not provide prices to the contractor, since the contractor is essentially authorized to fulfill legal requirements as an extension of the owner.

4. What rules must the contractor follow when acquiring CMT services that are strictly for contractor quality control and not for acceptance testing?

This contracting arrangement is most common when tests are being performed in support of contractor quality control in Quality Assurance/Quality Control (QA/QC) contracts. The contractor may utilize price in the initial step of the selection process, and an engineer may provide prices provided there are no engineering services required.

5. Can a private owner use price in the selection process for providers of CMT or CME services?

Yes. There are no restrictions on the use of price, but the Board strongly urges all consumers of engineering services to use demonstrated qualifications and experience to select the service providers.

6. Can a non-engineer provide CME services on a private project?

No. CME is an engineering service and can only be provided by a licensed professional engineer who is a full-time employee of the company offering the services.