

federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal grant award. [See CBB]

Analysis of Fraud

After any investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall appoint a team to analyze conditions or factors that may have contributed to the fraudulent or improper activity. The Superintendent or designee shall ensure that appropriate administrative procedures are developed and implemented to prevent future misconduct. These measures shall be presented to the Board for review.

Code of Silence

Purpose

The District shall implement a code of silence to enforce its commitment to ethical contracting standards and improve accountability and public confidence.

Vendor Relationships
Conflicts of Interest

It is important to avoid both the appearance of conflicts and actual conflicts of interest. The implication from the appearance of a conflict of interest is just as important as the implication from a real conflict. If an outside independent party might question the intent of a transaction or relationship, such transaction or relationship is deemed to impact the appearance of a conflict and therefore, should be avoided. Circumstances related to an appearance of conflict include those that would cause a reasonable and informed third party, having knowledge of the relevant information, to reasonably conclude that a Board member or administrator has compromised objectivity related to a vendor relationship. [See BBFA]

Definition

For purposes of this policy, “vendor’s representative” shall mean an employee, partner, director, Board member or officer of a potential vendor or consultant, lobbyist, actual or potential subcontractor of a vendor, or any other individual or for-profit or nonprofit organization acting through or on behalf of any person seeking an award or on behalf of a group of interested individuals or members.

Procurement Methods

Texas Education Code Section 44.031 allows for the purchase of goods and services through one of the following methods:

1. Competitive bidding for services other than construction services;
2. Competitive sealed proposals for services other than construction services;
3. A request for proposals for services other than construction services or a method provided by Government Code Chapter 2269 for construction services; or
4. Any other procurement method authorized by state law.

The code of silence period applies to the acquisition of goods or services using the procurement methods identified above as well as renewal periods for contracts previously awarded by the Board with multiple one-year renewal options.

Applicability

“Code of silence” shall mean a prohibition on any communication regarding any request for proposal, bid, or other competitive solicitation (as defined in the procurement methods above) between:

1. Any person who seeks an award from the District or its affiliated entities (including, but not limited to, the Spring Branch Education Foundation), including a potential vendor or vendor’s representative; and
2. A Board member, the Superintendent, senior staff member, principal, department head, director, manager, or other District representative who has influence in the evaluation or selection process.

Furthermore, campaign contributions, gifts, donations, and any other items of value are prohibited between the parties defined above for any known contract under consideration during the code of silence period. Also, candidates who have filed for election to the Board are subject to these limitations after the date on which the candidate has filed for office.

Exceptions

Nothing contained in this policy shall prohibit any potential vendor or vendor’s representative from:

1. Making public representations at scheduled pre-bid conferences or scheduled selection and negotiation committee meetings;
2. Engaging in contract negotiations during any scheduled meeting;
3. Making a public presentation to the Board during any duly noticed public meeting; or
4. Conducting business on contracts previously executed and currently in force.

The potential vendor or vendor’s representative shall send all written communication directly to the designated purchasing representative.

Nothing in this policy shall prohibit the purchasing department’s representative from initiating a contact with a potential vendor or vendor’s representative and subsequent communication related thereto for the purposes of obtaining further clarifying information regarding a response to a request for proposal, bid, or competitive

FISCAL MANAGEMENT GOALS AND OBJECTIVES
FINANCIAL ETHICS

CAA
(LOCAL)

solicitation. Such contact shall be in writing and shall be provided to the members of the applicable procurement/evaluation committee, including any response thereto.

The code of silence shall not apply to communication with the District's legal counsel, director of purchasing, and purchasing staff. Such communications shall be limited to the purpose of obtaining clarification or information concerning the subject solicitation. An exception also applies to other specific Board members for the purposes of the selection of external auditors or the Board's legal counsel, and any other specific circumstances approved by the Board.

Time Period

The code of silence time period shall begin 30 days before the issuance of a competitive sealed proposal, request for proposal, bid, or other competitive solicitation (as defined under Procurement Methods, above) and will officially end when the contract is awarded by the Board. At the commencement of the code of silence, at least one email notification shall be sent to District administrators, or other District representative who has influence in the evaluation or selection process for each competitive sealed proposal, request for proposal, bid, renewal, or other competitive solicitation. At the commencement of the code of silence, the purchasing department shall also provide public notice on the District's website at the same time the email notification is sent.

Regardless of the above time period, it is not acceptable for a potential vendor to participate in determining the scope of work, strategic direction, technical specifications, or evaluation criteria of such projects.

Violation

Any suspected violation of this policy shall be investigated by the District's police department, legal counsel, human resources department, and/or a contracted outside law firm and may result in the District deeming as void or voidable:

1. Any recommendation for award;
2. Any RFP, bid, or other competitive solicitation award;
3. Any bid award to the potential vendor or the vendor's representative; and
4. Any vendor's contract deemed void or voidable.

The potential vendor or vendor's representative determined to have violated this rule shall be subject to debarment from bidding and contracting activities of current and future projects for a period up to two calendar years (24 months). In addition to any other penalty provided by law, violation of this rule by a District employee

FISCAL MANAGEMENT GOALS AND OBJECTIVES
FINANCIAL ETHICS

CAA
(LOCAL)

shall subject the employee to disciplinary action up to and including dismissal. Board members and candidates who have filed for election to the Board; who have violated the code of silence; and/or who have received campaign contributions, gifts, donations, or any other items of value from such vendor's representatives during the code of silence shall abstain from voting on such matters for a period up to two calendar years (24 months).

In the event that a Board member or candidate unknowingly accepts a campaign contribution, gift, donation, or any other item of value from a vendor's representative during the code of silence, the Board member or candidate shall return the contribution within ten days after becoming aware of the conflict with this policy.

Formal Complaints

This policy is not intended to prohibit contractors and their representatives from issuing formal complaints or concerns about potential conflicts of interest during the code of silence. Such concerns, and reports of a suspected violation should be communicated to the executive director of human resources, District police department, District's legal counsel or designee.

Effective Date

This policy shall be effective as of the adoption date.