

Accounts Payable Manual

(formerly the Commercial Warrant Manual)

School Business Advisory Services

Accounts Payable Manual

(formerly the Commercial Warrants Manual)



Updated May, 2019



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Acknowledgment

May 2019

The staff of School Business Advisory Services at the Santa Barbara County Education Office would like to acknowledge and thank the San Diego County Office of Education's Board of Trustees, County Superintendent of Schools, and the Business Advisory Services Department for generously allowing our office to use their Commercial Warrant Claims Manual for many years as a basis for our Accounts Payable (Commercial) Audit Manual.

We have revised the manual where required to reflect the practices of our own county or updated dates and amounts. However, these revisions are minimal and all credit is due and acknowledged to the San Diego County Office of Education with our thanks and gratitude.

Denice Cora, Administrator
School Business Advisory Service
Santa Barbara County Education Office



Introduction

The purpose of the Accounts Payable (Commercial) Warrant Claims Manual is to help school districts process and pay commercial claims in proper form and in conformance with current legal requirements and good business practices.

The manual is intended for use by District staff involved in any phase of the accounts payable (commercial) warrant processing. It is organized into three main parts and a supplementary *Exhibits* section:

PART 1 provides an overview of the authority governing accounts payable (commercial) warrants, bidding requirements, contracts, and various governmental reporting requirements.

PART 2 reviews the Santa Barbara County Education Office procedures including audit procedures, approval certifications, warrant processing, and the steps for replacing/cancelling lost/damaged/overage warrants.

PART 3 is the main section which details the audit requirements for the various types of accounts payable (commercial) payments made by school districts, including: contracts/agreements, equipment/materials/supplies, “other/miscellaneous payments, public projects, reimbursements and revolving cash funds, and travel conferences.

EXHIBITS provide sample documents and checklists/forms that school district use to ensure they are submitting the proper documentation to the Santa Barbara County Education Office. The checklists/forms are utilized by the Accounts Payable (Commercial) Warrant Audit Desk in performing warrant auditing procedures.

Legal citations are referenced throughout the manual. In addition, key points are indicated in the reference column with the ! symbol. Part 3 includes a quick reference as to what audit documents are required. Minimum documentation required for audits is next to the ✓ symbol on the appropriate topic page.

The manual may be accessed via the School Business Advisory Services website at:

<https://sbceo.org/sbas/#1522260726225-fcd40e0f-4d34>

Password: Escape

We welcome your feedback. If you have any questions or suggestions, please contact Todd Humphreys, Financial Systems Supervisor (thumphreys@sbceo.org) in School Business Advisory Services at the Santa Barbara County Education Office.



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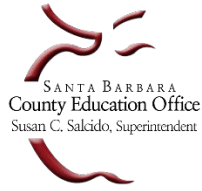
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Abbreviations of Legal References

BPC	Business and Professions Code
CC	Civil Code
CCP	Code of Civil Procedure
EC	Education Code
GC	Government Code
HSC	Health and Safety Code
IRC	Internal Revenue Code
LC	Labor Code
PCC	Public Contract Code
PRC	Public Resources Code
RTC	Revenue and Taxation Code
UPCCAA	Uniform Public Construction Cost Account Act
VC	Vehicle Code
5CCR	Title 5, California Code of Regulations – Education

California Codes may be accessed via the following websites:

- California Law at: www.leginfo.ca.gov/calaw.html
- California Code of Regulations at: www.calregs.com

Reference

PART 1 – OVERVIEW

California Education Code Summarizations

Authority

State statutes, as embodied in the California Education Code, charge each county superintendent of schools office with the responsibility to determine the legality of accounts payable expenditures for school districts in their jurisdictions.

The major authoritative Education Code sections on this topic are summarized here.

EC §42632

Authorized Signatures on District Orders Required

District orders must be signed by an authorized district official or by the majority of the governing board.

EC §42634

Required Contents of District Orders

EC §85234

District orders must be numbered and include the following:

- a) the fund or funds to be drawn upon,
- b) the amount of payment to be made from each fund,
- c) an itemized bill showing separate items and the price of each.

Not with standing that requirement, if the county superintendent of schools determines that including an itemized bill with the order is impractical under the system of payment utilized, the itemized bill showing the separate items and the price of each shall instead be retained by the school district and shall be available for audit as directed by the county auditor.

EC §42635

Requirement for Submission of Orders

EC §85235

District orders must be submitted to the county office. Upon approval, the county office signs the order which then becomes a requisition of the county auditor. The county office is allowed to prescribe alternative submission procedures for districts determined to be fiscally accountable under ECS 42650. (See subsequent pages for discussion on fiscally accountable and fiscally independent districts.)

EC §42636

Examination and Approval of District Orders

EC §85239

The county superintendent reserves the right to examine each order drawn against the funds of a school district. If the district order appears properly drawn for the payment of legally authorized expenses against the proper funds of the district, the County Office will process the payment.

EC §42638

Disapproval of District Orders

EC §85238

Warrants may also be disapproved at which point they are returned to the district with an explanation.

In addition to providing the framework in which warrants are processed and approved, the Education Code gives the county office ongoing responsibility to determine when a school district is not complying with standards and criteria for fiscal stability.

Reference

EC §35161
EC §17604
EC §81655

Delegation of Authority

Education Code provides general authority for the board to delegate to an officer or an employee of a school district, any of its powers or duties, including the authority to enter into contracts. ***The governing board, however, retains ultimate responsibility over the performance of these powers or duties so delegated.***

EC §17605
EC §81656

The delegation to contract may be limited by the board as to time, money or subject matter, or it may issue a blanket authorization in advance of its exercise.

No contract made by the board-designated authority, is valid or enforceable unless and until it has been approved or ratified by the governing board.

EC §17605
EC §81656
PCC §20111

By a majority vote, the governing board of a school district may adopt a rule of delegating to any officer or employee of the district, the authority to purchase supplies, materials, apparatus, equipment and services without requiring bids. Such expenditures may not be in excess of competitive bidding limits as set forth by Public Contract Code (currently \$15,000 for public projects and \$92,600 for equipment, materials and supplies). **Note: this amount is adjusted annually by the State Superintendent of Public Instruction (SSPI) pursuant to PCC section 20111(a).**

✓

Minimum Documentation for Audit:

EC §42647

♦ Board resolution indicating delegation of authority and limits if any.

Fiscal Independence

Fiscal independence is a status permitted under the Education Code to unified districts or districts with over 10,000 average daily attendance that can demonstrate adequate accounting controls over the expenditure cycles of accounts payable and payroll. This status transfers the legal liability of processing expenditures from the county office to the district. It is granted upon application approval by the County Superintendent of Schools, the County Auditor-Controller, and the Superintendent of Public Instruction (SPI).

When the status is granted, the fiscally independent district is not subject to the county office audit processes described in the above-referenced Education Code Section. The district may draw warrants on the county treasury without the county office's approval. The county office may, however, request copies of each warrant listing.

The district is required to provide the county office with monthly financial statements including year-to-date amounts and budget-to-actual comparisons. The status of fiscally independence may be revoked at the recommendation of the county office to the SPI should accounting controls subsequently become inadequate.

EC §42650

Fiscal Accountability

EC §1241.5

Fiscal accountability is a status permitted under the Education Code to any school district that can demonstrate adequate accounting controls over the expenditure cycles of accounts payable and payroll. The status of fiscal accountability is similar to that of fiscal independence described above, with two key differences:

- The county office has the discretion to audit accounts payable expenditures of the fiscally accountable district at any time during the year. Any findings and

Reference

**California
 Constitution
 Article 16,
 Section 6**

*See Also:
 Part 3, Awards,
 Page 71*

GC §8314

61 Ops. Cal.
 Atty. Gen. 303
 (1978)

Best Practice

EC §44015

*See Also:
 Part 3, Awards*

recommendations resulting from the county office’s audit must be addressed by the district.

- The county superintendent of schools may revoke the district’s fiscal accountability without approval of the SPI.

Gift of Public Funds

The use of public funds is strictly defined in the California State Constitution. The California Constitution states: “the gift of public funds, such as any expenditure which benefits an individual or small class of individuals only, with no benefit to all of the residents of the political entity” is prohibited. **The purpose of the expenditure, not the recipient, is the most important factor to be considered.**

A governing board’s expenditure of funds should not be considered a gift of public funds if one of the following is true:

- ✓ The Legislature has provided that a school board must or may make such an expenditure;
- ✓ The expenditure falls under a specified exemption (e.g., joint powers agreement);
- ✓ The district’s governing board has determined that the expenditure serves a public education purpose.

Before making expenditures that may be construed as a gift of public funds, the governing board should adopt a resolution stating that it has determined that such an expenditure benefits the public interest. The resolution should also state the general reasons that the board has determined that the expenditure serves a public purpose.

Some examples of items that may be considered to be a gift of public funds under the law are: flowers, gift certificates, reimbursements for employee meals that do not have a business or public purpose, or clothing for employees that contain a school logo.

Districts may not make charitable donations to organizations or individuals, including students, needy families of students, or staff.

Districts are encouraged to adopt a board policy and administrative regulation setting dollar limits for awards, incentives, and recognitions.

Districts are prohibited from using public resources for campaign activities, personal, or other purposes not authorized by law.

A governing board is not authorized to expend funds for meals for community leaders even when it is in the best interest of the district.

Note: Meals may be provided for community functions that serve a public purpose.

In order to express sympathy or joy, or to acknowledge a special event (wedding, new baby, etc.) to an individual, many school district employees may want to give a small gift or flowers. In such situations, it is best to use privately raised funds instead of public funds. Some school districts establish “employee funds” where employees may voluntarily contribute a nominal amount; or a voluntary collection is taken when an event takes place in order to provide a gift.

Exception to “Gift of Public Funds”

The governing board of a school district may give awards to employees or pupils under specific circumstances as defined in Ed Code section 44015. It is recommended that districts review the code and adopt appropriate board policies, if necessary.

Reference

PCC §20111
PCC §20115
PCC §20651
PCC §20651.5
PCC §22002

See Also:
Part 1, Statutory
Exceptions,
Page 7



Miller v.
McKinnon,
supra, 20 Cal.
2d 83, 88
Reams v.
Cooley, 171 Cal.
150 (1915)

BIDDING REQUIREMENTS

Letting of Contracts to Lowest Bidder

The law in California requires competitive bidding for most public contracts. The requirements of competitive bidding are intended to guard against favoritism, fraud or corruption in the award of public contracts; in doing so, waste is prevented and efficient use of public funds is ensured. The bid documents and the bidding process must take into account these fundamental principles and comply with the required bidding procedures.

With limited exceptions, school districts and community college districts are required to competitively bid any contracts involving an expenditure of more than the current bid limit provided by CDE, (reference the current bid limit published annually by the CDE [<https://www.cde.ca.gov/fg/ac/co/>]) for equipment, materials and supplies and more than \$15,000 for public projects (including materials and labor). Sales tax must be included in determining these amounts. These are defined in the Public Contract Code as:

Equipment, Materials, Supplies: (current bid limit)

- The purchase of any equipment, materials, or supplies to be furnished, sold, or leased to the district.
- Services, except construction services.
- Repairs, including maintenance as defined in Public Contract Code Section 20115, that are not defined as a public project.

The legal requirements of obtaining bids must also be observed for the purchase of materials such as diesel fuel, propane, oil or gasoline. The cumulative total cost of such material received during a school year cannot exceed \$92,600 (as of 1/1/19) without being bid. **Note: this amount is adjusted annually by the State Superintendent of Public Instruction (SSPI) pursuant to PCC section 20111(a).**

Public Projects: (\$15,000)

- Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- Painting or repainting of any publicly owned, leased, or operated facility.

The \$15,000 threshold limit applies generally to contracts for public works, construction works, and construction services.

The term public project, however, does not include maintenance work. Maintenance work includes all routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility, *minor* repainting, resurfacing of streets and highways *at less than one inch*, and landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

Unlawful Payment – Void Contract

Payments for materials or services cannot be processed if the district has not complied with applicable competitive bidding provisions. A contract made without compliance with competitive bidding, where such bidding is required, is void and unenforceable as being in excess of the public agency's power. Because persons dealing with a public agency are

Reference

	<p>presumed to know the law with respect to the requirement of competitive bidding and act at their peril, no payments may be made by a public entity under a contract let in violation of competitive bidding laws. Even though the person with whom the contract was made has supplied labor and materials in the performance of the contract and the public agency has received the benefits thereof, the contractor has no right of action to recover the reasonable value of such labor and materials.</p>
<p>PCC §20107 PCC §20651</p> <p><i>See Also: Part 3, Bid Bonds, Page 89</i></p>	<p>Bid Security</p> <p>All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: cash, a cashier's check made payable to the school district, a certified check made payable to the school district, a bidder's bond executed by an admitted surety insurer, made payable to the school district.</p> <p>Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.</p>
<p>PCC §20112 EC §81641</p> <p><i>See Also: CUPCAA and Part 3, Prevailing Wages, Page 100</i></p>	<p>Notice Calling for Bids</p> <p>The governing board shall publish at least once a week for two weeks in a newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's website or through electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The governing board may accept a bid that was submitted either electronically or on paper.</p>
<p>GC §6000-6008</p>	<p>A "newspaper of general circulation" in a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers, and is established, printed and published at regular intervals in the state, county, or city where publication, notice by publication, or official advertising is given or made for at least one year preceding the date of publication, notice or advertisement.</p>
<p>PCC §20103.8</p>	<p>Alternate Bid Items (Additive or Deductive)</p> <p>Effective January 1, 2001, AB 2182 added section 20103.8 to the Public Contract Code to authorize local agencies, including school districts, to require that a public works bid include prices for items that "may be added to, or deducted from, the contract for which the bid is submitted." AB 2182 further requires that if a local agency includes additive or deductive items in its bid, the "Notice to Contractors Calling for Bids" must indicate one of four methods the agency will use when determining the bidder with the lowest price. These methods are as follows:</p> <ol style="list-style-type: none"> 1. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items. 2. 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. 3. 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 local agency before the first bid is opened.

Reference

	4. 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.				
LC §17720, LC §1725.5 SB 854, 2014	Contractor Registration and Reporting (PWC-100) Effective January 1, 2015: The Notice Calling for Bids and contract documents must include the following information: <ul style="list-style-type: none"> ➤ No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. ➤ No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. ➤ This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. July 1, 2016: The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 California Code Regulation §16451(d) for the notice that previously was required for projects monitored by the CMU.) Effective July 1, 2017, SB 96 increased the registration and PWC-100 reporting limit as follows: <table> <tr> <td>Amended by SB 96, 2017</td><td>\$15,000 or public project</td></tr> <tr> <td></td><td>\$25,000 for maintenance projects</td></tr> </table>	Amended by SB 96, 2017	\$15,000 or public project		\$25,000 for maintenance projects
Amended by SB 96, 2017	\$15,000 or public project				
	\$25,000 for maintenance projects				
PCC §20116 PCC §20657	Splitting Bids Public Contract Code prohibits the splitting of a contract into smaller work orders or projects any work, project, service or purchase for the purpose of avoiding competitive bidding. Neither work nor labor associated with a purchase of equipment or materials to be installed to improve an existing building should be separated out from the equipment purchase for the purpose of avoiding the requirement for competitive bidding. A project may, however, be split into several trade oriented contracts in order to keep project costs low <i>provided the competitive bidding requirement has been met</i> . Contracts for related school improvements have been held by the courts to be individual contracts in instances where each contract was <i>decided on separately and independent of others</i> .				
<i>See Also:</i> Part 3, Construction Management, Page 91					

Reference

PCC §20118.2
 (K-12 districts
 only; no parallel
 authority for
 community
 college districts)

See Also:
Part 3,
Capital Outlay,
Page 64

PCC §20118.3
 EC §81651

PCC §20113
 PCC §20654
 PCC §1102

See Also:
Part 2,
Emergency
Waivers,
Page 29



See Also:
PCC 22000
CUPCAA

BIDDING EXCEPTIONS AND ALTERNATIVES

Following are various statutory exceptions to the competitive bidding requirement:

Computers, Software, Telecommunications Equipment, Microwave Equipment and Related Electronic Equipment and Apparatus

School districts may procure, by a detailed request for proposal (RFP) and competitive negotiation process computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus provided that the contracts are not for construction or for the procurement of any product that is available in substantial quantities to the general public. Published notice is required and the RFP must identify all significant evaluation factors, including price and their relative importance. Procedures for technical evaluation of proposals must be in place. If award is not to the lowest priced bidder, the district “shall make a finding setting forth the basis for the award.”

Educational Materials

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of its schools.

Emergency Repairs

In an emergency, when any repairs, alterations, work or improvement is necessary to any facility of public schools to permit the continuance of existing school classes or to avoid danger to life or property, the governing **board by unanimous vote and with the approval of the county superintendent of schools** may make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

A recent decision (2004) issued by the Court of Appeal of the State of California, Second Appellate District, imposes a more restrictive definition of what constitutes an “emergency.” Specifically, it requires that the definition of Section 1102 of the Public Contract Code be read into Sections 20113 and 20654.

Section 1102 states: “*Emergency, as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.*”

Even under emergency approval, districts must require any bonds and security otherwise required by law.

Requirements

Following are the requirements necessary to permit the County Superintendent to approve payments under an emergency waiver;

1. Contact the Financial Systems Supervisor, School Business Advisory Services, to alert her/him about the emergency waiver.
2. The district governing board must adopt – by unanimous vote—an emergency resolution that include details about the situation and declares an emergency situation to exist. The resolutions should be specific as to the scope of work that will be contracted for under the emergency provision.

Reference

GC §4217.12
GC §15814.10
et seq.
EC §81660



Best, Best &
Krieger Legal
Opinion

PCC §20660
EC §38083
2 CFR Part
200.317-326

3. Forward the original emergency resolution adopted by the governing board to the Financial Systems Supervisor, School Business Advisory Services, along with a cover letter from the district official that summarizes the situation.
4. When the nature of the emergency is such that corrective action is required before the governing board's next meeting, or before all board members can meet at a special meeting on twenty-four hours' notice, and the estimated cost exceeds bid limits, the district may request conditional approval to proceed from the County Office by submitting information relevant to the emergency. The district's superintendent or chief business official should contact governing board members individually to explain the emergency situation and contracting process, and to advise them that an emergency contracting resolution will come before the Board at a noticed meeting. A statement confirming this action and relevant information about the emergency must be sent to the Financial Systems Supervisor, School Business Advisory Services. The information will be reviewed and a prompt response will be given to the district official. The governing board must still take formal action to adopt an emergency resolution which should be forwarded as soon as possible after adoption to the County Office.
5. After review and approval by the County Superintendent of schools, a letter will be sent to the district confirming the circumstances and granting an emergency waiver. A copy of the letter should be attached to the invoices that are paid under the emergency waiver for audit process.
6. A payment bond for public works is required if the contract exceeds \$25,000.00. An emergency resolution does not relieve the district from bond or legal requirements.

Energy Service and Conservation Contracts

Although the Education Code requires competitive bidding for energy management agreements, public agencies are authorized to develop energy conservation, co-generation and alternate energy supply sources pursuant to the Government Code, without competitive bidding.

Caution: The scope of the Government Code provisions permitting the informal procurement of energy services have not been defined by a court and, as such, there exists a significant risk of legal challenge should a district utilize these provisions to perform construction or procure equipment that would otherwise be required to be bid.

A school district or community college district may enter into an energy service contract and any necessarily related facility ground lease on terms the governing board determines are in the best interest of the district. The determination must be made at a regularly scheduled public hearing, with two weeks advance notice and the governing board must find:

- a) That the anticipated cost to the district for thermal or electrical energy or for the conservation facility under the contract will be less than the anticipated marginal cost to the district of thermal, electrical, or other energy that would have been consumed by the district in the absence of those purchases; and
- b) that the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchase or other benefits provided under the energy service contract.

Food and Seasonal Commodities

Perishable foodstuffs and seasonal commodities needed in the operation of cafeterias may be purchased by the school district in accordance with rules and regulations for such purchase

Reference

EC §17595
PCC §20118
PCC §20652
PCC §20653

See Los Angeles Gas & Electric Corp. v. Los Angeles (1922) 188 Cal. 307 ; Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348; Hodgeman v. San Diego (1942) 53 Cal. App. 2d 610; County of Riverside v. Whitlock (1972) 22 Cal. App. 3d 863. Graydon v. Pasadena Redev. Agency (1980) 104 Cal. App. 3d 631

GC §53060

adopted by the governing board of the district notwithstanding any provisions of this code in conflict with such rules and regulations when purchased with state or local funds.

Federal requirements call for competitive bidding when the amount of the purchase exceeds \$150,000 (\$50,000 [as adjusted annually by the superintendent of public instruction] for School Food Authorities in California using federal funds.)

The FDA defines perishable food that is not heat-treated, not frozen, and not otherwise preserved in a manner to prevent the quality of the food from being adversely affected, if held longer than seven calendar days under normal shipping and storage conditions.

Food items should be bid if they can be supplied incrementally throughout the year and kept frozen or refrigerated without losing their necessary freshness and purchases are expected to exceed \$92,600 (as of 1/1/19). **Note: this amount is adjusted annually by the State Superintendent of Public Instruction (SSPI) pursuant to PCC section 20111(a).**

Purchase Through Other Public Agency (Cooperative Purchasing – “Piggybacking”)

The governing board may, without advertising for bids, if the board has determined it to be in the best interests of the district, authorize by contract, lease, requisition, or purchase order, any public corporation or agency to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other *personal property* for the district. Upon receipt of any such personal property the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice.

Public Policy Exception (Sole Source)

Where competitive bidding proposals do not produce an advantage, a statute requiring competitive bidding does not apply. The law in California on the point holds that where competitive bidding works an incongruity and is unavailing as affecting the final result, or where it does not produce an advantage or is practically impossible to obtain what is required and observe such forms, then competitive bidding may be dispensed with; for example, competitive bidding is not required in a case of a sole supplier of a needed commodity.

This principle of law should be not be interpreted as authorization for school districts to bypass the competitive bidding requirements in instances where it is merely felt that advertising for bids is inconvenient, or where the school district based on negotiations with a particular supplier, believes it can obtain the best possible price from such a supplier even though there are other suppliers

Before contracting on the basis of sole source needs, districts are urged to consult with their legal counsel and with an individual or individuals with expertise regarding the product and the sources for purchase of the product at issue to assure that a sound argument can be made for a sole source purchase.

Specialized Services

The governing board may contract with and employ persons to provide special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. This typically includes the district’s legal counsel, auditors, and architects.

Reference

EC §17540
 EC §17602
 EC §81653

Surplus Property

The governing board of any school district may purchase surplus property from the federal government or any agency thereof in any amount needed for the operation of the schools of the district without competitive bidding.

EC §17542

Surplus Property (Used)

*See Also:
 Part 3,
 Surplus
 Property,
 Page 68*

The governing board of any school district may sell used personal property belonging to the district to the federal government, to the state, to any county, city, or special district, or to any other school district, and the governing board of another school district may purchase the property. The selling price and the terms of the sale must be determined by the governing boards of the school districts affecting the sale, and approved by the county superintendent of schools. The sale may be made without advertisement for or receipt of bids, or compliance with any other provisions of this code.

PCC §20117

Two or More Identical Bids

Notwithstanding any other provisions of law, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to a school district for the purchase, sale, or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the governing board of any school district may determine by lot which shall be accepted.

PCC §22030 et
 seq.

California Uniform Public Construction Cost Accounting Act (“The Act”)

Pursuant to Public Contract Code 22030 et seq., by adopting construction cost accounting standards promulgated by the California Uniform Public Construction Cost Accounting Commission (“the Commission”), school districts may award contracts for public projects without engaging in a formal bidding process.

- Public projects valued at \$45,000 or less may be performed by force account, negotiated contract or purchase order.
- Projects valued up to \$175,000 may be performed under contracts awarded by the “informal” bidding process. If all bids received exceed \$175,000, the awarding agency may authorize by a four-fifths vote of the governing board to award a contract up to \$187,500.
- Projects greater than \$175,000 except as otherwise provided in the act, must be let to contract by formal bidding procedure.

Before a district can engage in the informal bidding process for projects falling within the purview of the Act, the district must adopt the Commission’s cost accounting standards and establish informal bidding procedures by resolution.

The essential steps a district must take to utilize the informal bidding process are:

1. The governing board must elect, by resolution, to become subject to the Commission’s cost accounting standards. The resolution shall specify that the local agency will meet the requirements prescribed in the California Uniform Construction Cost Accounting Commission’s Cost Accounting Policies and Procedures Manual and state the effective date the district will implement the accounting and bidding procedures.

Reference

Sample Resolution

RESOLUTION OF THE _____, STATE OF CALIFORNIA IN THE MATTER OF
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING PROCEDURES

Resolution No. _____

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code section 22000 et seq., the Uniform Public Construction Cost Accounting Act, establishes such a uniform cost accounting standard;

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

NOW, THEREFORE, BE IT RESOLVED that the _____ of _____, California, hereby elects under Public Contract Code section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the _____ - notify the State Controller forthwith of this election.

This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED this ____ day of _____, ____ by the following vote;

AYES:
NOES:
ABSENT:

Insert Seal if Applicable

Signature Title

City of _____ County of _____

PCC §22034

2. The district notifies the State Controller in writing of its election to become subject to the Commission's cost accounting standards.
3. When the district elects to become subject to the uniform construction cost accounting procedures, the entire district is considered subject to the Act and no departments will be exempt.
4. An informal bidding ordinance, or a board adopted policy equivalent to such as required by the participating district, shall be enacted pursuant to PCC section 22034.
5. Once opting into the Act, participating districts must always adhere to the terms of the Act until such time the agency formally opts out by resolution of its governing board. Having opted in, selective adherence to the terms of the Act is in violation.
6. The governing board may discontinue the district's participation under the uniform public construction cost accounting procedures by adopting a resolution stating this fact. A copy of the resolution shall be filed with the State Controller.
7. The State controller shall notify the California Uniform Construction Cost Accounting Commission of all districts electing to become subject to the uniform public construction cost accounting procedures. Additionally, the Commission shall be notified of local agencies electing to discontinue participation under these procedures.
8. The district must develop and maintain lists of contractors by trade who will be notified when a project is bid in the trade for which a contractor is listed. The Commission requires an annual review and update of the contractors by mandating written notice

Reference

each November from the district to all construction trade journals designated by the Commission inviting licensed contractors to submit their names for inclusion in the list of qualified bidders for the following calendar year. In January of each year, the district can develop its list of qualified bidders in each trade. The district may include any contractor on the lists of qualified bidders; the district must, however, include in the contractors list any contractor who has properly responded to the notices published in the construction trade journals.

9. The district must maintain a list of journals (as prescribed by the Commission) for receipt of notices of informal bids.
10. All mailing (faxing or emailing) of notices to contractors and construction trade journals pursuant to the Act shall be completed not less than 10 calendar days before bids are due. The notice inviting informal bids must describe the project in general terms how to obtain more detailed information about the project, and state the time and place for the submission of bids.

Emergency Procedures (CUPCAA)

In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two. By four-fifths vote of the governing board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By four fifths vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within seven days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed).

Districts may obtain more information about the Act, including a copy of the official policies and procedures manual, by contacting the State Controller's Office at (916) 327-2289, or via website at: www.sco.ca.gov/ard/local/cuccac/cuccac_man.pdf

PCC §12100
et seq.

California Multiple Award Schedule (CMAS)

The California Multiple Award Schedule (CMAS) program was established in response to Assembly Bill 1727, which was signed into law in October 1993. The program was further enhanced as a result of SB 910, chaptered in 1995.

PCC §10298-
§10299

The program enables California state agencies and local governments, under delegation from the State of California, Department of General Services (DGS), to make purchases of information technology and commodity products and services without conducting their own competitive bidding process.

See Also:
Part 3
California
Multiple
Award
Schedule, pg 73

A multiple award is a state master contract that is awarded by DGS to two or more contractors for same and similar products and services at same and similar costs from a common bid or negotiation process. CMAS does not conduct a bid or other evaluation process. CMAS contracts are based primarily on the Federal General Services Administration (GSA) multiple award schedule program. The contractor offers products and/or services at prices from an already existing competitively assessed, cost compared, multiple award contract and CMAS adds California contract terms and conditions, ordering procedures, procurement codes,

Reference



*Incidental
Installation set
at 10% of cost of
goods. See
Steelgard v.
Janssen
(1985) 171
Cal.App.3d 79
2(b)*

policies, and guidelines. School districts order directly from the contractor and are required to send a copy of the purchase order to DGS. Effective 1/1/2010, local government agencies no longer pay DGS an administrative fee to use a CMAS contract. Instead, the selling CMAS contractor pays the DGS a 1% incentive fee (fee is waived for California certified small businesses).

CMAS contracts may be used for the purposes of E-Rate funding only if the **DGS vendor is the most qualified bid**. The school district must comply with California competitive bidding requirements and post the requested services or equipment on the Schools and Libraries Division national web site. After the 28-day bidding period closes, the district may issue a purchase order to the CMAS vendor if it is the lowest responsive bidder.

CMAS contracts may not be used for public works. DGS considers the installation of physical layer cable and carpet as public works. The district's purchase order may allow for a public works component only when it is incidental to the overall project requirements. Additionally, the labor and materials must be included on the same purchase order and must not be separated. The purchase order is considered by DGS to be the total order document.

Additional information about the CMAS program and contracts may be obtained from the DGS website: www.pd.dgs.ca.gov/cmas/default.htm

Reference

EC §17604
EC §17605
EC §81656
PCC §20111

*See Also:
Part 1,
Delegation of
Authority,
Page 2*

CONTRACTS – GENERAL

Authority

The governing board or its designated representative has the authority to contract in the name of the district. The governing board can delegate the authority to contract on their behalf; however, no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board.

By a majority vote, the governing board of a school district may adopt a rule of delegating to any officer or employee, the authority to purchase supplies, materials, equipment and services not subject to competitive bidding as set forth in the Public Contract Code. The board-adopted rule shall prescribe the limits of the purchaser's authority as to time, money and subject matter. *All transactions must be reviewed by the governing board every 60 days.*

Contract Formation

There are three essential items that must be included in contracts:

1. **Scope of Work:** A description of the services to be performed or the goods to be delivered.
2. **Price:** The amount of consideration for services to be performed to the goods to be delivered. In the case of indefinite quantity purchases, a not-to-exceed amount is appropriate.
3. **Term:** The start and end date of the contract.

Contract Form

Contract Date

Each contract must be dated. The date is usually found at the beginning of the contract. Otherwise, the date is found at the end of the agreement or next to signatures. The date may be the noted governing board approval date.

Parties Involved

All parties to the agreement must be stated in the contract. The parties are usually indicated at the beginning of the contract. One party is the district (not an individual school site, with the exception of some charter schools); the other party is the vendor, contractor, lessor, consultant, etc.

Listing Components

Components vary with each contract. The component parts may be itemized on the last page of the agreement. If any component is waived by the district, the waived component should be lined through or noted as waived on the agreement page. Otherwise, all noted components, including addendums, exhibits, attachments, etc., should be included in the documents submitted as the contract. This is also required with "non-standard" contracts. The components should be securely attached for filing as one complete contract.

Reference

Contract Provisions

Specific provisions of each contract will vary. Two important provisions are:

1. The payment(s), including amount(s) and payment schedule,
2. and the term(s) of the contract.

EC §45125.1
et seq.



Fingerprinting

The Education Code was amended in 1998 which requires contractors providing specified school, classroom, and school site services and pupil transportation to comply with certain fingerprinting and criminal background requirements if they will have “contact with pupils.” This is known as the “Michelle Montoya School Safety Act.” Districts, including charter schools, must determine the extent to which a contractor or its employees will have contact with pupils and certify in writing to the district that neither the employer nor its employees who may come in contact with pupils have been convicted of a felony. *All applicable contracts should include provisions to address this requirement.*

Contract Signatures

The contract must be signed by authorized representatives of the parties to the contract. The governing board may delegate the power to contract to the district superintendent or a designee. In the event the contract is signed by less than a majority of the governing board members, the date of the governing board approval must be noted on the contract. If a majority of the governing board members’ signatures are on the contract, the board approval date does not need to be included.

PCC §20111(b)

Bonds

Bid bonds are required on all public works contracts in excess of \$15,000. There is not a stipulation as to the amount of the bid security required; however, standard practice is to require a bid bond of 10% of the total bid price.

CC §9550 et
seq.

*See Also:
Part 3
Contractors
Licenses, pg 92*

The payment bond for public works is mandatory if the contract for any public work involves an expenditure in excess of \$25,000; it is optional if the expenditure is \$25,000 or less. Regardless of the amount of the contract, the bond must be in a sum not less than one hundred percent (100%) of the total contractual amount payable.

There is no statutory requirement for a performance bond; however, one is highly recommended for the protection of the district.

Contract Form – Approval and Review

Districts are not required to have all contracts approved as to form. Districts may have legal counsel review their contracts; notation of this approval is usually shown on the signature page of the agreement.

*See Also:
Part 3
Prevailing
Wages, pg 100*

Sample contract documents are available at:

SBCEO website: <https://sbceo.org/sbas/#1522260726225-fcd40e0f-4d34>

All blank items in a contract should be filled in or crossed out so that all pertinent information is known. Waived or inapplicable provisions should be so indicated.

Reference

See Also:
Part 3,
Lease or Lease-
Purchase,
Equipment, pg
97

EC §17596



Warren v.
Chandos (1896)
115 Cal. 382;
Bent Bros. Inc.
v. Campbell
(1929) 101 Cal.
App. 456.

EC §45103.1
EC §88003.1



If “boilerplate” form is used from the contractor/vendor, the provisions usually favor the contractor and may not always include provisions satisfactory to the district. Districts may have such forms reviewed by legal counsel. A common provision of these contracts is “This contract is governed by the laws of the State of California.” Often this is another state if the company providing the service is based outside of California. If the agreement specifies another state, it should be changed to reference California

Assignment of Contract

Contract assignments must be signed by the original contractor or his/her authorized representative. District approval of any assignment is often specified in the terms of the original agreement; however, if the contractor desires that payment be made to another party, the district can do little to prevent the assignment. If the payment is assigned to a bank, the bank may desire that the district complete additional paperwork as a consent to the assignment. The additional paperwork may need to be reviewed by legal counsel to determine if it is in the best interest of the district.

Continuing Contracts

Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired for the district, or for materials or supplies to be furnished or sold to the district may be made with an acceptable vendor as follows:

- For work or services, or for apparatus or equipment: not to exceed five years
- For materials or supplies: not to exceed three years

Districts should ensure that contracts, including month-to-month agreements, do not exceed these limits. Additionally, competitive bidding requirements should be considered as they apply to the *aggregate* cost of the contract and not the fiscal year. Equipment purchases for items of less than \$500 in value are considered supply purchases and may not exceed three years.

Contract Entered Into After Competitive Bidding

Under competitive bidding laws, a school district may not let a contract different from that called for in the call for bids. The contract entered into must be substantially the same as the contract terms included in the bid documents. (Note: Deductive change orders are subject to the same terms as additive change order to prevent a substantial change in scope.)

Anti-Contracting (SB 1419)

SB 1419, which limits the flexibility school and community college districts have to choose between permanent employees or contractors, became effective January 1, 2003. Under SB 1419, the default position is that the district must hire in-house employees unless it can prove that it meets one of several exceptions. Personal service contracting is permitted only when:

- New functions for which the Legislature authorizes independent contractors’ services are not available or can’t be satisfactorily performed by district employees.
- The services are incidental to a purchase or lease contract.
- The goals of the district can’t be accomplished through the regular hiring process.
- An emergency condition exists.

These statutes apply to personal service contracts entered into after January 1, 2003.

Reference

REPORTING REQUIREMENTS

Employment Development Department (EDD)

Effective January 1, 2001, any business or government entity that is required to file a federal Form 1099-MISC for services is required to report information to the Employment Development Department (EDD). Districts must report within 20 days of the earlier of either:

- Entering into a contract with an independent contractor which equals or exceeds \$600
- When the aggregate payments to an independent contractor equal or exceed \$600

The form on which this is reported is DE 542. The EDD requires that you report the independent contractor's Social Security number regardless of whether they use an Employer Identification Number (EIN).

Additional information may be obtained from the EDD website at: www.edd.ca.gov

Franchise Tax Board (FTB) Non-Resident Withholding Requirement for Independent Contractors

RTC §18662

California Revenue and Taxation Code and related regulations require districts that make payments of California source income of more than \$1,500 in a calendar year to non-resident independent contractors performing services to withhold income taxes. The withholding rate is 7 percent of gross payments.

*See Also:
Part 3
Franchise Tax
Board,
Withholding,
Non-Resident
Page 87*

Some exceptions to the withholding requirement are:

- Payment is being made to a resident of California or to a corporation or partnership that has a permanent place of business in California.
- The vendor is a tax-exempt organization under either California or federal law.
- The vendor receives a written authorization waiving the withholding from the Franchise Tax Board.

Districts should consider this requirement when hiring out-of-state independent contractors and include provisions in the service contract that address the withholding requirement.

All vendors should complete California FTB Form 590, "Withholding Exemption Certificate," and Form 587, "Nonresident Withholding Allocation Worksheet," and return them to the district to document which income is subject to withholding.

Districts should report and remit payments using revised FTB Form 592. Any taxes withheld are due on a quarterly basis. There are penalties for failing to withhold and/or for under-withholding. In addition, districts must continue to provide the payees with paper Forms 592-B at the end of the year which show the total amount withheld for that year.

IRC §6109

Districts may obtain additional information (FTB Publication 1017) and reporting forms from the Franchise Tax Board website at: <https://www.ftb.ca.gov/forms/misc/1017.pdf>

Internal Revenue Service (IRS) Backup Withholding Requirements

*See Also:
Part 3, Taxes
Page 86*

Missing and Incorrect Taxpayer Identification Numbers (TINs)

Districts are required to withhold at 28% for payments made to vendors subject to reporting on Form 1099-MISC when:

Reference

- The vendor/payee is paid at least \$600 in a calendar year and has not provided their Taxpayer Identification Number (TIN); and/or
- The IRS notifies the district to withhold because of an incorrect TIN previously filed.

IRS Form W-9, "Request for Taxpayer Identification Number and Certification," is used to get the payee's correct TIN. Districts may develop and use their own W-9 if its content is substantially similar to the official IRS Form W-9 and it satisfies certain certification requirements. IRS forms and instructions may be obtained via the Internet at:

www.irs.gov/formspubs/index.html

If a vendor does not provide a TIN, backup withholding should begin with the first payment made by the district and continue until the vendor submits a completed and correct Form W-9. The district has 30 calendar days to stop backup withholding. If the W-9 is received before the 31st day or before backup withholding has begun, the district is not required to institute withholding.

In addition to receiving a TIN from a vendor, it is equally important that the correct name be provided. The IRS compares the name and TIN filed by the district on a Form 1099-MISC to their records and will assess a penalty if a valid TIN is accompanied by the wrong name. Careful attention should be given to a sole proprietor reporting his/her Social Security number as their TIN but doing business as (DBA") another name.

The individual's name should be listed first, followed by "DBA, company name". If discrepancies exist with the TIN, the IRS will send a notice to the district with instructions on how to proceed. This is referred to as a "B Notice" (backup withholding) or CP 2100.

The IRS has an on-line TIN Matching Program which allows districts to confirm the payee's TIN to reduce the amount of "B Notices." The registration home page and program tutorials may be accessed via: <https://www.irs.gov/pub/irs-pdf/p2108a.pdf>

Backup withholding is treated as a separate tax from employment taxes, subject to its own deposit schedule.

Nonresident Aliens - Foreign Vendors

Special rules apply to individuals who are not United States citizens or resident aliens. Such individuals may include foreign teachers. Payments made to a foreign vendor who is considered by the IRS to be a nonresident alien normally require a statutory 30% withholding tax rate. Independent services are services performed in the United States by a nonresident alien who is an independent contractor rather than an employee. The withholding requirement is not applicable if a foreign vendor supplies only material goods.

Districts are required to withhold and remit the tax and to report all paid income of a foreign vendor to the IRS and to the vendor. Reporting is required on all money paid whether or not taxes are due and remitted. Reporting is made using a Form 1042 to the IRS and Form 1042-S to the vendor. Form 1099 should not be used. Districts should obtain a Form W-8 (usually a W-8BEN) from the foreign vendor. Taxable salaries or wages for foreign resident employees are reported on FORM W-2.

Exceptions: Some countries have treaties with the United States that allow for a lesser amount of withholding or, in some cases, exemptions from withholding. To claim a lesser amount or exemption from withholding, the vendor must complete Form 8233 and submit it to the district. The district submits the form within five (5) days to the IRS. Form 8233 will be effective ten (10) days later unless the IRS informs the district that it is invalid.

Reference

Because of the complexity in determining the amount of withholding, if any, districts should refer to IRS Publication 515, "Withholding Tax on Nonresident Aliens and Foreign Corporations," available via the Internet at: www.irs.gov/pub/irs-pdf/p515.pdf

Internal Revenue Service Form 1099-MISC Reporting

Districts are responsible for filing IRS Form 1099-MISC for each person, other than a corporation, to whom they have paid:

- At least \$10 in royalties;
- At least \$600 in: rentals (including office space, machines and equipment), services (including parts and materials), prizes and awards to non-employees, other income payments; and

Payments \$600+ made in a calendar year, including to individuals and corporations, as follows:

- Physicians or other providers of health care services in connection with medical assistance programs, health, accident, and sickness insurance;
- Payments to an estate or beneficiary for wages or other compensation of a deceased employee;
- Any person or vendor from whom federal income tax was withheld under the backup withholding rules regardless of the amount of the payment;
- Fees to attorneys (effective 1998), including legal corporations. When a lump-sum payment is made to an attorney and the plaintiff's settlement amount is not shown separately from the legal fees, the entire amount must be reported.

See Also:
Part 2,
Consultants
Page 42

The County Office of Education prints Form 1099-MISC and submits the information to the IRS electronically for all districts by January 31st. The data required to process the 1099 forms is extracted from Escape. In order for this to happen, the supplier must be flagged for 1099. As part of a district's initial vendor setup under Section 6 – Payment Information, 1099 should be updated to "Yes." Please be sure to update all appropriate lines in this section, during the initial vendor setup, as many of these items pertain directly tax reporting notifications.

See Also:
Part 3,
Attorneys/
Legal Services,
Page 38

A detailed bulletin regarding the reporting and printing procedures for Form 1099-MISC is distributed to all districts annually in December. Additional filing information about Form 1099-MISC may be accessed via the Internet at: www.irs.gov/formspubs/index.html

Michelle Montoya School Safety Act (Fingerprinting and Background Check)

AND

Part 4,
Exhibit 11
Independent
Contractor
Determination
Page 154

The Michelle Montoya School Safety Act was enacted in 1997. The law requires contractors providing specified school, classroom, and school site services and pupil transportation to comply with fingerprinting requirements if they will come in contact with pupils. Each contract for school site services should be evaluated on a case-by-case basis to determine compliance with the Education Code to protect the safety of pupils who may come in contact with contractors and their employees.

School districts, except community college districts, must evaluate contracts for the following specified services to determine the potential for employee contact with pupils:

EC §45125.1 -
 §45125.2

- School and classroom janitorial
- School site administrative
- School site grounds and landscape maintenance
- Pupil transportation
- School site food-related

Reference

If the school district determines that the contractor's employees will have more than limited contact with pupils, the employees must have their criminal histories checked by the Department of Justice, and the contractor must certify in writing to the district that none of its employees who may come in contact with students have been convicted of a serious or violent felony. In determining whether a contract employee has limited contact with pupils, the school district must consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others.

Contractors who have been issued a certificate by the Department of Motor Vehicles authorizing the person to operate a school bus and similar vehicles are excluded from this requirement.

This law applies to charter schools.

It is recommended that contractors be notified of the fingerprinting requirement as part of the bid process, if applicable, or at the awarding of a contract. Contracts should be revised to include appropriate language to comply with this law. The following is a sample contract clause that may be used when the school district determines that the contractor and his/her employees will have limited contact with pupils:

“State law requires vendor and contractor employees to be fingerprinted and cleared by the Department of Justice (DOJ) before entering a school when contact with pupils is possible.”

An exception is permitted if the school district determines that you and/or your employees will have only “limited contact” with pupils, and measures to ensure pupil safety are in place.

The District has determined that the “limited contact” exception applies, provided the following conditions are complied with at all times. If you are not willing to comply, your employees may not enter the school site until you first certify that they have been fingerprinted and the DOJ has reported to you that the employees have not been convicted of a serious or violent felony.

“If you are self-employed, the requirements apply to you.”

State Board of Equalization (SBE) – Sales and Use Tax

Purchases of equipment and supplies for use by school districts are taxable and payable to the vendor at time of purchase, and subject to:

1. *California Sales Tax* – 7.50% (effective 7/1/2013) statewide rate for purchases from qualified vendors engaged in business throughout California, or
2. *California Use Tax* – 7.50% (effective 7/1/2013) for purchases from out-of-state vendors.
3. Additional *district* taxes are levied in some cities and part of the county.

Voters in individual jurisdictions may approved the creation of one or more special tax districts to provide revenue for transit projects or other government services.

See Also:
Part 3,
SBE Sales and
Use Tax, Page
87

Reference

For example: The combined sales and use tax rate in much of Santa Barbara County is 7.750%. The sales tax rate for Santa Maria is 8.750% and Guadalupe is 8.000% (as of 4/1/2019). The sales tax rate for the city of Santa Barbara is 8.750% (as of 4/1/19). Refer to the California Department of Tax and Fee Administration website at:

<https://gis.cdtfa.ca.gov/public/maps/TaxRates/> for the tax rate based upon your school district's address location. **Note: these amounts are subject to change based on state and local taxing authorities.**

District taxes relate to the special district in which the sale takes place, not necessarily where the vendor is located. Therefore, school districts located within an area subject to additional sales or use tax (i.e., Santa Barbara) pay the higher tax on purchases delivered to the school district. If a school district representative takes possession of materials from the vendor at his/her place of business which is located in a different tax rate area, the tax rate applicable for the vendor's tax area is used.

If a vendor uses a common carrier, the vendor must collect 7.50% base tax; the school district must report the additional special district tax due on the sales/use tax return.

If the vendor uses his own trucks and is delivering on a regular basis, the vendor must collect the full special district tax (7.750% for Santa Barbara County).

Taxpayers often ask what they should do if a sales or use tax is not billed by the retailer on the purchases of consumable supplies, equipment, or other taxable items which they purchase for their own use. Under the law, either the sales or use tax will generally apply to sales or purchases of tangible property for storage, use or other consumption in California. When the tax is not billed by the retailer, the course a purchaser should follow is dependent upon whether the transaction is subject to the sales tax or the use tax.

If the purchase is made from a retailer in California and the merchandise is delivered to the buyer in this state, the transaction is subject to *sales* tax. It is the seller's responsibility to apply the correct tax rate to an invoice and pay the state.

If the purchase is made from an out-of-state retailer, the transaction is subject to the California *use* tax. The primary liability for this tax is on the purchaser. Even though the out-of-state retailer may be licensed to collect this tax, if he/she fails to do so, the purchaser is still obligated to pay. Any out-of-state company that is engaged in business in the State of California must register with the Board of Equalization to collect use tax on their retail sales of tangible personal property to California customers. If an out-of-state company is not engaged in business in California, the Board of Equalization is prohibited from *requiring* these companies to register to collect California use tax from their customers. If uncertain whether the out-of-state retailer is licensed to collect California tax, the purchaser should pay the tax directly to the Board of Equalization. Payment of tax to an unlicensed seller will not absolve the purchaser of liability for the tax.

Applicability

- **Tangible Personal Property**

Examples of tangible personal property include such items as furniture, paper products, books, and equipment. In addition, some service and labor costs are taxable if they result in the creation of tangible personal property. For example, if a vendor is requested by a school district to build a special display case, the vendor is creating tangible personal property. Therefore, the total amount charged for the display case (including the charge for labor) would be taxable. This would also be the case if the school district provided the materials for making the display case.

Reference

▪ **Labor and Service Costs**

Labor costs for making repairs (e.g., service to a copy machine) are not taxable since they do not result in the creation of tangible personal property. The vendor is only repairing or reconditioning existing property. Likewise, labor charges to install or apply property which has been sold are not ordinarily subject to sales tax. (*Note: the labor charge should be stated separately on the invoice*).

▪ **Exempt Purchases**

Some purchases are exempt from sales and use taxes. Examples include, but are not limited to:

1. Purchase of certain food products for human consumption; and
2. Labor charges for repairing, reconditioning, or installing tangible personal property.

▪ **Trade-Ins**

When a vendor gives the school district credit for trade-in of used equipment, the sales or use tax is applied to the gross amount of new equipment exclusive of the trade-in value of the used equipment.

▪ **Barters or Exchanges**

The use of barter or exchanges is considered the same as making sales or purchases under the Sales and Use Tax Law. The fair market value of the property or services received is normally the amount to which tax will apply.

▪ **Delivery Charges**

Tax does not apply to delivery charges if:

1. The delivery charges are clearly stated as a separate entry on the invoice; **and**
2. The item is shipped directly from the vendor to the purchaser using the U.S. mail, an independent contractor, or a common carrier, rather than the vendor's own vehicles.

Tax does apply to delivery charges if:

1. The item is delivered by the vendor to the purchaser in his/her own vehicle, **or**
2. The delivery charge for the U.S. mail, independent contractor, or common carrier is not clearly delineated on the invoice, **or**
3. The delineated charge for delivery is more than actual costs charged to the vendor by the U.S. Postal Service, independent contractor, or common carrier. The amount invoiced that is above the actual delivery charge is taxable.

▪ **Handling Charges**

Handling charges are generally taxable. When handling and shipping, postage, or delivery charges are combined on an invoice, the vendor should be requested to state the amount applicable to handling and the amount applicable to shipping, postage, or delivery charges. If this is not practical, it is advisable to pay sales or use tax on the total charges.

Reference

BOE Regulation
1502(f)(1)(C)

▪ **Optional Software Maintenance Agreements**

Beginning January 1, 2003, the lump-sum charge for an optional software maintenance agreement is 50% taxable when the purchaser receives tangible personal property during the term of the agreement (such as software updates on CD).

”Optional” means that the customer may purchase prewritten software without also purchasing the maintenance contract. If the customer must purchase the maintenance contract in order to purchase or lease a prewritten computer program, then the entire charge for the maintenance contract remains taxable as part of the sale or lease of the prewritten program. If no tangible personal property is transferred to the customer during the period of the maintenance contract (e.g., customer downloads software updates from a website and no CD is sent), tax does not apply to any portion of the charge.

Filing the Use Tax Report

Use tax reports and taxes due are periodically filed with the State Board of Equalization by school districts. It is important for Accounts Payable staff to consistently record the amount of use taxes payable.

See Also:

Part 3

**Sales and Use
Tax Page 87**

If a school district paid another state’s sales tax on purchase of goods from an out-of-state vendor, the amount may be deducted on the California use tax reporting form. Additional information about sales and use taxes may be obtained at the Board of Equalization website: www.boe.ca.gov

Reference

EC §42636,
EC §85236

PART 2 – COUNTY OFFICE PROCEDURES

AUDIT PROCEDURES – GENERAL

The Santa Barbara County Education Office has established audit procedures that are designed to assist school districts process and pay commercial claims in proper form, in conformance with current legal requirements and good business practices.

Even though the County Office is responsible for auditing Accounts Payables, the district is ultimately responsible for ensuring the funds are properly safeguarded and expended. The audit function at the County Office level should not be considered a substitute for the district’s own system of internal controls.

District expenditures must comply with the California Education Code and other relevant governmental codes. An expenditure cannot contradict the district’s board policy. In many cases, an expenditure is supported by board resolution or specific board approval; however, an expenditure must not violate any local, state or federal laws.

Districts must furnish to the County Office appropriate and complete documentation to support their expenditures. **REFER TO PART 3, AUDIT DOCUMENTATION, FOR SPECIFIC REQUIREMENTS BASED ON THE NATURE OF THE EXPENSE.** If documentation is missing or clarification is needed regarding an audit issue, the financial analyst will request the information from the district before proceeding with the audit.

Timelines

District Staff:

- District personnel have until 5:00 p.m. to enter any payments in to Escape on their regular weekly district cutoff date. This ensures adequate time for the county office to review, audit, and print the warrants for delivery to the districts on their individual prescribed delivery date.
- Once the payable information is accurately entered into the accounts payable system of Escape, districts should generate a Payment Register Report (ReqPay05) to ensure that all of the requested warrants are accounted for. From this list, the district will be able to ascertain which payments are flagged for audit. The district will then need to submit all of the appropriate backup documentation to the county office supporting the payment(s). Please be aware of how the supporting documentation changes based upon the type and nature of the individual payment.
- If a district requires a payment that is outside of their regular weekly accounts payable schedule, the district must inform the Financial Systems Supervisor and their assigned Financial Analyst to request an “Emergency Out-of-Sequence Payment.” The Financial Systems Supervisor will determine if there are available resources to accommodate the request and relay that information back to the district in the form of an approval. The district will then be able to submit the payment and verify the available delivery options.

County Office Staff:

- Warrants are normally printed daily according to a weekly district schedule. Please refer to the schedule that is disseminated to the districts to determine district cutoff times, printing and delivery date. Be aware of how district and County Office holidays may affect the regular weekly schedule.



Emergency Out-of-Sequence Warrants

Reference

California
School
Accounting
Manual,
Accounting
Terminology

- The financial analyst will perform a detailed audit of each account payable flagged for audit. The financial analyst will compare the vendor payment request to the required documentation to determine the accuracy and legality of the district's prospective vendor payments. If the documentation is satisfactory the financial analyst will approve the vendor payment for printing.
- Any vendor payments without adequate documentation will be held until such documentation arrives and the legally required audit can be completed. If backup is not received by the time of warrant printing, payment may be deferred until the district's next scheduled printing.

Unless otherwise requested, the released warrants will be delivered to the district via County Office truck mail on the next regularly scheduled delivery day.

Warrants may be picked up from the County Office by authorized district employees or their designees. Authorization is made via an annual resolution adopted by the governing board. Before warrants can be released to an individual other than the named authorized agent, a memo signed by or e-mailed from the authorized agent must be forwarded to the Accounts Payable Audit Desk giving specific approval. Photo identification (state issued) is required of the individual receiving the warrant(s). **Districts must notify the accounting technician, and ideally the financial team via email and/or by phone, when making special arrangements to pick up warrants.** Otherwise, the warrants will be forwarded for delivery via county truck mail service.

Warrants

Definition - A warrant is a written order, drawn by an LEA's governing board or its authorized officer(s) or employee(s), approved by the county superintendent of schools and allowed by the county auditor, directing the county treasurer to pay a specified amount to a designated payee.

The two types of warrants issued by school districts are commercial (accounts payable) warrants and payroll warrants.

1. Commercial (accounts payable) warrants include payments for supply and equipment purchases; employee travel and expense claims; consultant fees; utilities; lease and rental fees; contracts; and so on.
2. Payroll warrants include payments made to employees as compensation for their services as employees.

EC §42632-3
EC §85232-3

Signing of Warrants (School Orders) By District

The practice of having warrants signed by a majority of board members may cause difficulties in scheduling the preparation and processing of warrants to coincide with board meeting dates. To avoid this problem, the board may adopt a resolution authorizing an officer or employee of the school district to perform this duty. A new resolution must be adopted and filed with the County Office of Education prior to the beginning of each fiscal year, or anytime during the year when revisions are required.

GC §5501

Signatures of authorized persons, including board members, must appear on the resolution. The agent may authorize his/her facsimile signature stamp to be used in lieu of a manual signature in which case both the manual and facsimile (stamp) signatures are to appear on the resolution.

Reference

Note: To use a facsimile signature in lieu of a manual signature, the authorized officer must file with the Secretary of State his/her manual signature certified by him/her under oath, causing it to be executed with a facsimile signature in lieu of a manual signature. The facsimile signature has the same legal effect as his/her manual signature.

Accounts Payable (Commercial) Warrant Processing

Accounts Payable (Commercial) warrants and warrant registers are generated at the County Office of Education. Warrants are scheduled to generate on daily basis, by district, Monday through Friday, except when noted on our processing calendar.

The Santa Barbara County Education Office will review all warrants for the following:

1. Payee and amount **must agree** with supporting documents (listing sheets/warrant registers)
2. Authorized agent signature (the name on the annual resolution)
3. Fund name and/or number, as appropriate
4. Numerical sequence (no gaps)
5. Voids (for off-line districts only) are marked/stamped
6. No corrections or erasures in the amount portion
7. Payee must not be blank. Should this occur, the warrant will be cancelled by the County Office.

See Also:
Part 2,
Authorizations/
Approvals
Page 28

Invoices

As noted above, among the supporting documents used in the audit of a district's accounts payable (commercial) warrants are the invoices to be paid. The County Office financial analyst will review these invoices for the following:

1. Invoices should be addressed to the school **district**, not to the individual school *site*.
2. Invoices submitted by sole proprietors (i.e., independent contractors) using a "DBA" ("doing business as") should clearly indicate on the warrant "should be made payable to (name of individual as indicated on the W-9)."
3. Nature of expenditure must be legal. Be alert to items indicative of being a gift of public funds.
4. Purchases approved in grant applications for federal funds that are not permitted by Education Code have the required certification of federal funds.
5. Invoices for goods must be itemized, quoted in job lot prices or covered by contract. Items purchased must have names/descriptions, not just a stock number. Generally, statements are not acceptable in lieu of invoices.
6. Invoices for services must be based on a legal contract and match scope and terms (fee, hourly rates, travel expenses, not-to-exceed amount, scope of contract, cost of materials, etc.)
7. Invoices for foreign and non-resident vendors must reflect proper withholding.
8. Previous balances cannot be paid; an invoice should be requested.
9. Invoices are checked for mathematical accuracy, including sales tax computation.
10. Sales tax is not paid on invoices from out-of-state vendors. Exception: District has the vendor's California Permit number on file. These must be readily available upon request. For more information see: <https://efile.boe.ca.gov/boeweb services/verification.jsp>
11. Labor, supplies or a combination of labor/supplies exceeding bid limits require certification of advertising for bids.
12. Emergency repairs exceeding bid limits must be approved by the County Superintendent of Schools, in lieu of advertising for bids. The approval letter should be submitted with the invoice. CUPCCAA districts must provide declaration of emergency.

See Also:
Part 2,
Emergency
Waivers,
Page 29

See Also:
Part 4,
Accounts
Payable
Process
Overview,
Exhibit 1

Reference

13. Payments should generally be made in arrears. Advance payments should be limited to: certain utilities, postage, admission tickets, permits and services provided by other governmental agencies, subscriptions to or purchases or rentals of newspapers, magazines, periodicals, or other publications, payment on leases of real property and for the maintenance of equipment under agreements not exceeding one year for the district and the schools thereof when such action will result in a decreased cost to the district or which cannot be secured without payment in advance.

When submitting invoices, please prepare them as follows:

- If any totals or figures on the invoice have been changed by district staff, a clear and precise written reason must be given by authorized district staff.
- Statements are not acceptable substitutes for invoices and any other required documents.
- Submit legible copies of invoices.
- Please write "credit" on any credit invoices as these can be difficult to distinguish.
- If a prior, partial payment has been made and the warrant being issued will be less than the invoice, please note on the invoice, the date, amount, and warrant number of the previous payment.

Reference

EC §42636,
EC §85236

AUTHORIZATIONS AND APPROVALS

Cash Approval

In addition to auditing invoices and warrants, cash must be approved for the expenditures of each district before warrants are signed/approved to be delivered or picked up by the district;

1. IT Services uploads FTP files to the county auditor on a daily basis.
2. The financial analyst verifies that there is sufficient cash at the County Auditor's Office (if there is not sufficient cash the accounting technician will start by calling the district).

Insufficient Cash to Approve Warrants

If a district does not have sufficient cash to cover its expenditures, the district will be notified and the final reports/warrants will be pulled and not sent to the district. They will be held until sufficient cash is available to process the batch or until month-end, when the warrants will be voided.

Certification/Approval Stamps

Various purchases/invoices may require certification and/or approval. Following are suggested certification formats which can be affixed to or "stamped" on invoices or claims when specific certification/approval is required.

Credit Card Expenditures

Certification by individual responsible for district credit card expenses:

"I hereby certify that I have reviewed this claim and it represents only actual and necessary expenses incurred by me pursuant to applicable policies and administrative regulations of the _____ School District. All receipts are on file in the district office and will be provided to the County Office of Education for audit purposes upon request."

Signature (Authorized District Official) _____ Date: _____

E-Rate Program Expenditure Audit Certification

"The undersigned hereby certifies that he/she is ____ (Title) ____ of _____ School District. The school district has ensured that the purchase described below is an approved E-Rate Program contract made in compliance with all California requirements for competitive bidding and the federal requirement for posting for 28 days on the SLC web site prior to award by the school district governing board. Documentation is on file with the district."

Warrant # _____ Warrant Date _____ Amount _____

Signature _____ Date: _____

Federal Project Certification

Certification that expenditure was included in application:

"I hereby certify that this expenditure was included in our application for federal funds and that documentation is on file in our office."

Reference

Signature _____ (Authorized School District Official)

Governing Board Approval

“Approved by the governing board on _____.” (Must be current fiscal year date)

Signature/Title _____

Stock Number Certification

When invoices are itemized by stock numbers and not by descriptions, district verification./certification is required:

“Stock numbers have been verified as valid/legal items.”

Signature/Title (Authorized School District Official) _____

Travel Expenditures

EC § 32435

Certification when complete itemized receipts are not provided for travel claims:

“I hereby certify that this claim represents only actual and necessary expenses of travel incurred by me for authorized travel on _____ (inclusive dates) pursuant to applicable policies and administrative regulations of the _____ School District. (Attach any required/available receipts.) I hereby certify that this claim is true and complete and includes no expenses for the purchase of alcoholic beverages in compliance with Education Code section 32435.”

Total Amount of Claim \$ _____ Date ____/____/____

Signature _____
(Employee/Officer/Representative of Governing Board)

PCC §1102,
§20113, §20114,
§20654

Emergency Waivers

Districts may award contracts without competitive bidding in specific emergency situations. An approved emergency request may be submitted with backup for payment for a contract in excess of the bid limits that was executed without competitive bidding.

In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, **the board may, by unanimous vote, with the approval of the county superintendent of schools**, do either of the following:

1. Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.
2. Notwithstanding Public Contract Code section 20114, authorize the use of day labor or force account for the purpose.



Even under an emergency approval, districts must require compliance with SB 854 (2014) requirements, bonds and security otherwise required by law.

Following are the requirements necessary to permit the County Office of Education to approve payments under an emergency waiver:

Reference

When the nature of the emergency is such that corrective action is required before the governing board's next meeting, or before all board members can meet at a special meeting on twenty-four hours' notice, and the estimated cost exceeds bid limits, the district may request conditional approval to proceed from the County Office by submitting information relevant to the emergency. The district's superintendent or chief business official should contact district governing board members individually to explain the emergency situation and the contracting process, and to advise them an emergency contracting resolution will come before the Board at a noticed meeting.

A statement confirming this action and relevant information about the emergency may be faxed to the Financial Systems Supervisor, School Business Advisory Services. The information will be reviewed and a prompt response will be given to the authorized district official. The governing board must still take formal action to adopt an emergency resolution which should be forwarded as soon as possible after adoption to the County Office.

1. Contact the Financial Systems Supervisor, School Business Advisory Services, at (805) 964-4711 ext. 5372 or by email to alert the County Office about the emergency waiver.
2. Following SBCEO approval, the district governing board must adopt—by unanimous vote—an emergency resolution that includes details about the situation and declares an emergency situation to exist. **The resolution should be specific as to the scope of work that will be contracted for under the emergency provision and an estimate of the total costs.**
3. Forward a copy of the emergency resolution adopted by the governing board to the Financial Systems Supervisor, School Business Advisory Services, along with a cover letter from the authorized district official that summarizes the situation. The resolution and cover letter may be faxed to (805) 964-3041 or e-mailed before the originals are mailed.
4. After review and approval by the County Superintendent of Schools, a letter will be sent to the district confirming the circumstances and granting an emergency waiver. **A copy of the letter should be included as part of backup documentation with all invoices that are paid under the emergency waiver for audit purposes.**
5. A payment bond for public works is required if the contract exceeds \$25,000. An emergency resolution does not relieve the district from bond or other legal requirements

CC §9550

*See Also:
Part 4,
Exhibit 6*

Note: A 2004 decision issued by the Court of Appeal of the State of California, Second Appellate District, (Paul G. Marshall, JR. et al. vs. Pasadena Unified School District) incorporates Public Contract Code Section 1102 into the definition of an emergency.

“Emergency, as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

Wire Transfers



On rare occasions, districts may initiate wire transfers to make certain payments, such as bond service payments and insurance premium payments. Wire transfers should not be initiated for payments that are routinely subject to accounts payable (commercial) warrant audit process. All wire transfer requests (except those requested by charter schools) are approved by the financial analyst prior to being processed by the County of Santa Barbara Treasurer's Office.

Reference

California
School
Accounting
Manual,
Accounting
Terminology

EC §42632-3
EC §85232-3

GC §5501



WARRANTS

Definition

A warrant is a written order, drawn by the local education agency's governing board or its authorized officer(s) or employee(s), approved by the county superintendent of schools and allowed by the county auditor, directing the county treasurer to pay a specified amount to a designated payee. Accounts Payable (Commercial) warrants are payments made to vendors (i.e., non-payroll expenditures). Most regulations governing the handling of warrants are prescribed by the County of Santa Barbara Auditor and Controller.

Signing of Warrants (School Orders) By District

The practice of having warrants signed by a majority of board members may cause difficulties in scheduling the preparation and processing of warrants to coincide with board meeting dates. To avoid this problem, the board may adopt a resolution authorizing an officer or employee of the school district to perform this duty. A new resolution must be adopted and filed with the County Office prior to the beginning of each fiscal year, or anytime during the year when revisions are required.

Signatures of authorized persons, including board members, must appear on the resolution. The agent may authorize his/her facsimile signature stamp to be used in lieu of a manual signature in which case both the manual and facsimile (stamp) signatures are to appear on the resolution.

Note: To use a facsimile signature in lieu of a manual signature, the authorized officer must file with the Secretary of State his/her manual signature certified by him/her under oath, causing it to be executed with a facsimile signature in lieu of a manual signature. The facsimile signature has the same legal effect as his/her manual signature.

On-Line Districts

1. Accounts Payable (Commercial) Warrants and warrant registers for on-line districts using the Santa Barbara County Education Office financial system are computer-generated at the County Office. Special attention is required, regarding monthly and year-end processing deadlines. Calendars containing these due dates are sent to districts at the beginning of each fiscal year.
2. All Accounts Payable (AP) data entry is to be completed by 5:00 p.m. on the district cutoff day indicated by the AP schedule. This will allow the necessary time for the County office to perform its audit requirements and contact the district for any required follow up. With the county's approval, the warrants will be printed and delivered to the district on the third (3rd) business day following the district's regular cutoff date. For example: if the district has an AP submission cutoff day of Monday, the regular delivery date of the AP Warrant will be (+ 3 days) Thursday.

Off-Line Districts

Off-line districts produce warrants using their own computerized financial systems.

Emergency Out-of-Sequence Accounts Payable (Commercial) Warrant Requests

In an emergency situation, when a district must issue an accounts payable (commercial warrant) and the district is not scheduled for processing, an "Emergency Out-of-Sequence"

Reference

warrant may be requested and issued. To request an Emergency Out-of-Sequence warrant, the district must:

1. Notify the Finance team in general and the Financial Systems Supervisor specifically by email. A follow up phone call to the Financial Systems Supervisor will allow for a discussion of the immediate possibilities and development of a plan to meet the expectations of the district's request for the, "Emergency Out-of-Sequence Warrant."
2. The request should contain a description of the warrant being requested and the nature of the emergency necessitating the use of the Out-of-Sequence Request. Please include the following in the email request:
 - a. Email Subject line: "Emergency Out-of-Sequence Warrant Request."
 - b. In the body of the email:
 - i. Payee
 - ii. Nature of the emergency
 - iii. Amount of warrant
 - iv. Date the warrant is need by
 - v. Any special delivery arrangements and instructions.
3. The Finance Team will review and either approve or reject the request.
 - a. If approved – The finance team will confirm the information provided by the district and proceed with auditing and printing the warrant.
 - b. If rejected – The finance team will review the accounts payable request on the district's regularly scheduled audit date.
4. Based upon the supporting documentation provided by the district, the Finance Team will review the payment according to the established audit criteria.
5. Once approved, the warrant will be printed and the delivery method will be executed.
6. Please be aware that the Finance Team typically prints warrants by noon each day. Please ensure that all information is received well before noon in order to make sure there will be sufficient time to process the "Emergency Out-of-Sequence Warrant Request."

Duplicate (Replacement) of Lost, Stolen, Destroyed Warrant

In the event that a payee of a school district claims that a warrant was, lost, destroyed or never received, the governing board may be petitioned to issue a new warrant.

1. The district sends the finance team a written request (email) to cancel the original warrant and reissue a new payment warrant. The following information should be included with the request using the Cancel/Reissue form available on the SBCEO website (<https://sbceo.org/sbas/#1522260726225-fcd40e0f-4d34>):
 - a. Payee/Vendor
 - b. Original warrant number (to be cancelled)
 - c. Issue date of original warrant
 - d. Amount of the warrant (Payment indicated on the warrant)
 - e. Fund(s), from which the warrant was to be paid
 - f. Reason For Cancellation
 - g. Requestor's name
 - h. District Signature & Date
 - i. Affidavit of Lost or Destroyed warrant, signed by the payee (The affidavit is available at <https://sbceo.org/sbas/#1522260726225-fcd40e0f-4d34>)

Reference*See: Exhibits 2*

2. The Finance Team will contact the County Treasurer's office to verify that the original warrant has not been cashed or a replacement issued.
3. If the warrant has been cashed, the Finance Team will notify the district. The district may request a copy of the cashed warrant, if needed.
4. If the original warrant has not been cashed, the Finance team will prepare and forward the Notice of Stop Payment and the Affidavit of Lost or Destroyed warrant to the County Treasurer's office.

Please be aware that a stop payment will not be processed until 7 days after the issue date, unless the warrant is stolen. A stop payment takes 3 banking day to process before a warrant may be reissued.

SPECIAL HANDLING OF WARRANTS

(Warrant Status, Stop Payment, Cancel, Affidavit, Stale Dates, Copy of Cashed Warrants, Forgery)

Warrant Status

To verify the status of a warrant or if a warrant was cashed, telephone or email the Finance Team. The accounting technician will need the warrant number and will get back to you as to whether the warrant has cashed.

Stop Payments

A Notice to Stop Payment may be issued for a lost or stolen warrant or a warrant with incorrect vendor information. To request a stop payment the district must submit a written request to the Accounts Payable (Commercial) Warrant Audit Desk, giving the following information:

1. Stop Payment Request Form (which includes the following information)
 - a. Reason for stop payment
 - b. Warrant number
 - c. Warrant date
 - d. Amount
 - e. Payee/vendor
2. Affidavit of Lost or Stolen Warrant (signed and dated by payee)

The Accounts Payable (Commercial) Warrant Audit desk will forward the request form to the County Auditor. The County Auditor requests that their Stop Payment Requests be received prior to 2:00 pm daily.

Instructions for completing Affidavit

Affidavit to Obtain Lost or Destroyed Warrant to be forwarded to and completed by payee/vendor. (<https://sbceo.org/sbas/#1522260726225-fcd40e0f-4d34>)

- The district or payee/vendor returns the completed Affidavit to the County Office for processing which includes a Notice to Stop Payment on the original warrant.
- The County Office will cancel the warrant.

Reference

EC §42632-3
§85232-3

Note: If a warrant is lost in the U.S. mail, an Affidavit may not be processed until ten (10) working days have elapsed. If the warrant is lost other than via the U.S. mail, or is destroyed, an Affidavit may be processed immediately.

Cancelling a Warrant

The need to cancel a warrant may result from a district request or arise from a problem discovered during the audit process which occurs **after the warrant is generated**.

1. If the **district** is cancelling the warrant:
 - a. Submit a completed Accounts Payable (Commercial) Warrant Cancellation form to the Finance Team for processing to the County Auditor. The request should include a reason for the cancellation, the warrant number, the warrant date, the amount, and the payee/vendor. The warrant/affidavit should be attached to the form.
 - b. District should write or stamp the word "Cancelled" across the County Superintendent's signature. **NO OTHER MARKS OF ANY KIND SHOULD APPEAR ON THE WARRANT.**
 - c. The Finance Team will process the cancellation of the warrant and handle the transfer of the money back to the district's fund.
2. If the **County Education Office** is cancelling the warrant:
 - a. The Finance Team will complete the Cancellation form and forward the warrant for processing to the County Auditor.
 - b. The district may reissue a warrant only after the cancellation process has been completed.

Stale Dates - Cancelled for Age

Warrants are cancelled by the County Auditor after a period of six (6) months. The County Auditor notifies the Accounts Payable Audit Desk about stale-dated warrants. The Accounts Payable Audit Desk then cancels the stale-dated warrants, and the district is credited for the amount of the cancelled warrant to object 8699. The Accounts Payable Audit Desk sends notification to the district. The district then determines whether to reissue a new warrant to replace the warrant voided for age.

Copy of Cashed Warrant

Districts often receive inquiries from vendors as to proof of payment. When this occurs, the district should call or e-mail a member of the Finance Team and provide the following information:

- ✓ Warrant number
- ✓ Amount
- ✓ Payee/vendor
- ✓ Warrant date (date signed by County Superintendent of Schools)

The accounting technician will go to the County Auditor's website to determine whether the warrant has cashed. If cashed, the district may request a copy of the cashed warrant at that time. The County Office will send a copy of the warrant to the district.

Reference**Forgery**

If a forgery is suspected, districts should not send a copy of the cashed warrant to the vendor.

In the event of a forgery, the district should immediately contact the finance team to report this fact, as well as provide a completed Notice to Stop Payment form which includes the following information:

- Warrant number
- Warrant date (date signed by the county superintendent of schools)
- Amount
- Payee/Vendor name
- Reason for Stop Payment
- District Signature
- Warrant number, warrant date, and warrant amount for two (2) previous payments made to the same vendor (if applicable).

The vendor/payee must add to the explanation of circumstances involved “***under penalty of perjury, the signature on the warrant is not my signature***” in his/her own handwriting.

The Finance Team will forward the affidavit to the County Auditor who will implement procedures to investigate the forgery.

A replacement warrant will not be processed until the County Auditor has given the authority to do so.

Reference

PART 3 – AUDIT REQUIREMENTS

SPECIALIZED SERVICES

GC §53060

Authority

An exception to the competitive bidding requirement for non-construction services is provided for “special services and advice” under Government Code Section 53060. Such services include: financial, economic, accounting, engineering, legal or administrative matters if such persons are specially trained, experienced and competent to perform the special services required. Common examples of these exceptions include the district’s independent auditor, legal counsel and architects. It is recommended that district’s use a process to secure ‘best pricing’ for services needed. As an example of this would be to follow an RFQ/RFP process.

ACCOUNTANTS / AUDITORS

*This is a professional service contract and, as such, is **not** subject to competitive bidding provisions regardless of the cost of the contract.*

EC §41020,
EC §84040

Authority

Governing boards must contract for an annual audit of the school district income and expenditures by source of funds by April 1st of each year. The School Business Advisory Services (SBAS) Department collects all annual audit contracts from the school districts. If a district does not contract for an annual audit, the County Superintendent of Schools contracts on its behalf and bills the districts for the services.

Care should be taken to ensure that the agreement for the annual audit complies with all applicable Education Code requirements. In addition, auditors must be certified by the State Controller’s Office (SCO) in order to perform annual audits for local education agencies. A list of certified auditors can be found on the SCO website at: <http://cpads.sco.ca.gov/>

The contract must include the following items:

- ✓ Type of Contract, including the professional services to be rendered; e.g., Annual Audit, xxxx-xx fiscal year
- ✓ Payment Provisions: May be based upon a per hour amount for each of the types of persons providing services with a maximum total for the audit. Payment of ninety percent (90%) is usually made upon delivery of the report to the required parties. The final ten percent (10%) is made after certification by the State Controller that the audit report conforms to the reporting provisions of the Audit Guide.

✓

Minimum Documentation for Audit

- ◆ Copy of fully executed contract, including payment provisions
- ◆ Board approval date
- ◆ Invoice (preferably signed)
- ◆ Final payment requires: Copy of certification by State Controller that the audit report has been accepted

Reference

EC §17302,
EC §81138

ARCHITECTS / ENGINEERS

This is a professional service contract and, as such, is not subject to competitive bidding provisions.

GC §4525-
§4529.5

Authority

“...all plans, specifications, and estimates shall be prepared by a licensed architect holding a valid certificate under Chapter 3 (commencing with section 5500) of Division 3 of the Business and Professions Code or by a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with section 6700) of Division 3 of the Business and Professions Code, and the observation of the work of construction shall be under the responsible charge of such an architect or structural engineer...”



Selection for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Districts should adopt procedures that assure that such services are engaged on the basis of demonstrated competence and at fair and reasonable prices. These procedures must assure maximum participation of small business firms, as defined by the Director of General Services, pursuant to GC §14837.

*See Also:
Part 1,
Contracts,
Page 16*

Additionally, the procedures must specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract.

EXCEPTION: If the district is using Proposition 1A funding—the new State School Facilities Program—architects, engineers, landscape architects, and environmental engineers must be selected using a “competitive process.” This does not require selection based solely on price or the “low bidder;” however, the district must design a selection process that is based on “demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” It is recommended that districts expecting to receive Proposition 1A funding review with legal counsel the procedures they use to select architects and engineering professionals.

The professional services contract must include the following items:

- ✓ Type of professional services to be rendered; e.g., “Architectural Services, Learning Resources Center, Big Blue School.”
- ✓ Term of Contract: May commence on a certain date and be contingent upon completion of a project. Open-ended agreements are also executed so that one architectural firm or architect is involved in several stages of construction for the district. **The term may not exceed five years.**
- ✓ Payment Provisions: Standard payment provisions based upon the final cost of construction of a particular project or a per-hour cost. (Estimated cost will be used to make beginning payments.)



Minimum Documentation for Audit

- ◆ Copy of fully executed contract, including payment provisions
- ◆ Board approval date

Reference

- ◆ Invoice, preferably signed by district official
- ◆ Payment for completion of working drawings (final plans) requires the following approvals:
 - California Department of Education
 - Division of the State Architect (DSA).
 - Governing Board acceptance of final plans (excerpt)
- ◆ The final payment requires:
 - Division of the State Architect (DSA) approval of construction or release of payment.
 - Release of claims from architect.

EC §81837

EC §17297

EC §81134

21CCR §32

ATTORNEYS/LEGAL SERVICES

This is a professional service contract and, as such, is not subject to competitive bidding provisions regardless of the cost of the contract.

GC §53060

Authority

School districts in Santa Barbara County which use Santa Barbara County Counsel for legal services adopt a resolution agreeing to pay established charges for services. Their services are billed on a cost recovery per-hour fee basis and are itemized in arrears.

The Santa Barbara County Legal Services Consortium serves many of the Santa Barbara school districts. Districts may choose to participate at an established cost per average daily attendance or pay the sliding hourly legal fee depending upon the experience of the attorney selected by the district.

EC §35041.5,
§35204-35205
EC §70902

A school district may appoint a legal counsel as an employee or an independent contractor, and/or may contract for legal services. Community college districts may do so under general authority of the permissive code.

The contract must include the following items:

*See Also: Part
1, Contracts,
Page 14*

- ✓ Type of Contract—should include the specific type of legal services to be performed; e.g., litigation for employee dismissal.
- ✓ Term of Contract—may be an effective date with expiration of contract upon completion of services.
- ✓ Payment Provisions—may include a dollar amount per hour for the services of a specific attorney. An attorney may require a retainer amount in advance per month, with an itemized invoice for additional services or expenses.

IRC §1.6045
(c)

*See Also: Part
1, Reporting
Requirements,
Page 17*

Note: Payments to attorneys are reportable on IRS Form 1099-MISC however, effective January 1, 2007, if the warrant (which includes a portion for legal fees) is made payable solely to the claimant but is delivered to the attorney's office, the amount is not reportable.

Minimum Documentation for Audit

✓

- ◆ Fully executed contract/agreement, including payment provisions
- ◆ Board approval date

Reference

	<ul style="list-style-type: none"> ◆ Invoice, preferably signed by district official certifying that services have been performed
<p>EC §17070.98 GC §4525 et seq. PCC §20110 et seq. PCC §20650 et seq.</p>	<p>CONSTRUCTION MANAGEMENT</p> <p>Authority</p> <p>School districts are allowed to hire a construction manager to assist with the district’s management of a construction project if the district does not have any employees who possess adequate experience.</p>
<p>! </p>	<p>School districts may enter into agreements with construction management firms by issuing a Request for Proposal (RFP) or similar document. Government Code permits districts to award such contracts on the “basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” The firm serves as the agent of the school district for a particular construction project or projects. The firm facilitates the procurement of contractors to perform each of the various trades required to complete the project.</p> <p>As with any contract, the district must be certain that the rights and obligations of the district and the construction manager are clear and precise. Coordination and consistency in the relative duties of the architect, project inspector, and contractors should be considered in negotiating and documenting the terms and conditions of the construction manager’s services.</p> <p>All contracts with trade contractors are between the school district and the trade contractors. The construction management firm is <u>not</u> a party to these contracts. <i>Accordingly, payments for work performed by the trade contractors should be made directly to the contractor, not the construction management firm.</i> School districts procure the trade contractors pursuant to the competitive bidding requirements in the Public Contract Code.</p>
<p>See Also: Part 3, Public Projects, Page 91</p>	<p>The construction management firm typically is compensated on a sliding percentage based on the costs of each of the trade contracts awarded for the project, excluding additive change orders. The firm’s compensation should not be adjusted as the result of change orders approved after the award of the contracts. Since compensation is not increased, the firm has an incentive to ensure that no unnecessary change order is processed to consume the firm’s time and resources. School districts should realize savings in administrative time and a reduced number of additive change orders to the anticipated project cost.</p> <p>A state or local agency may <u>not</u> contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direct control of a licensed architect, registered engineer, or private contractor.</p>
<p><u>78 Op. Atty. Gen. 48.</u></p> <p>✓</p>	<p>Contract payments for construction management services must have approvals of required agencies. Payments made for supervision of construction must be made in compliance with contract provisions—usually upon satisfactory completion of a percentage of the construction project as agreed upon under a sliding scale.</p>
	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed contract, including detailed payment provisions ◆ Board approval date

Reference

- ◆ Invoice signed by district official responsible for approving the construction manager's services
- ◆ Board-approved change orders
- ◆ Bid Form
- ◆ Proof of DIR Certification (if required under SB 96 – 2017)
- ◆ Notice of Completion

FINANCIAL SERVICES**Authority**

Districts may hire financial advisors for debt instruments such as capital leases, general obligation bonds, tax and revenue anticipation notes, and certificates of participation. This is a professional service contract and, as such, is not subject to competitive bidding provisions regardless of the cost of the contract.

Debt Instruments

California Debt
Advisory
Commission
1993

The fine legal distinctions between leases and debt are not material to the financial considerations that should discipline governmental leasing practices. In the face of competing demands for their limited general fund resources, government agencies can afford only so many long-term lease obligations. Before assuming such obligations, agencies should assess their general fund conditions and establish reasonable limits on their leasing activity. Moreover, agencies should subject leasing decisions to central planning and control procedures, to prevent the unplanned accumulation of lease obligations, which are fixed commitments that diminish needed budgetary flexibility. Observance of these review and oversight procedures can help agencies manage the financial risks posed by tax-exempt leasing.

General Obligation Bonds

*California
School
Accounting
Manual,
Procedure 705*

General Obligation bonds are debt instruments backed by the full faith and credit of the issuing government. General obligation bonds issued by LEAs in California are authorized by election under the provisions of Education Code Section 15100 and are secured by the statutory obligation to levy an *ad valorem* property tax sufficient for the interest on and redemption of the bonds.

Capital Leases

CSAM
Procedure 710

A range of lease-purchase arrangements which results in the transfer of title to the lessee. Most capital leases entered into by government agencies qualify for tax-exempt status.

Tax and Revenue Anticipation Notes (TRANs)

CSAM
Procedure 715

Tax and Revenue Anticipation Notes are short-term debt instruments issued in anticipation of taxes or other revenues. The notes are repaid from the revenues to which they relate.

Certificates Of Participation

CSAM
Procedure 720

Certificates of Participation (COPS) are a common popular mechanism for providing capital to school districts to purchase equipment, finance construction projects, or refinance existing leases. COPS provide long-term financing through a lease with option to purchase, or a

Reference

conditional sales agreement. An identified revenue source to finance the purchase is an important criterion in this type of financial venture.

COPS are securities that are sold on behalf of the district by an underwriter. A trustee handles accounting for the use and repayment of the proceeds of these securities, often to a bank. The trustee disburses the COPS proceeds to purchase the equipment or pay for the construction project for the district. The district makes periodic payments to the trustee to retire the debt. The trustee pays the investors.

✓

Minimum Documentation for Audit

- ◆ Excerpt from board minutes approving issuance of the COPS
- ◆ Copy of trustee agreement
- ◆ Copy of payment schedule, including amounts

INSURANCE PROVIDERS

GC §53200
EC §17565-
§17567
EC §81601-
§81603

Authority

School districts may pay insurance premiums for a variety of coverages: property/liability, workers compensation, and health/welfare benefits for employees. Generally, such payments are due in advance.

Supplemental insurance plans may be approved for employees by governing boards to provide retirement incentives and annuity plans (i.e., Supplemental Employee Retirement Plan – “SERP”). Because of the complex legal and tax aspects involving these types of plans, it is recommended that districts seek legal counsel before entering into any agreements.

✓

Minimum Documentation for Audit

Payments for supplemental plans may be audited. Required documentation includes:

- ◆ Excerpt from the governing board minutes giving approval for the specific plan. Including the resolution, if one was adopted. The approval should include sufficient details about the purpose of the plan, the beneficiaries (by name and title), and any other pertinent terms and conditions.
- ◆ Copy of fully executed agreement (a purchase order may be used provided it contains sufficient details).
- ◆ Invoice from vendor, signed by district official responsible for plan oversight.

Reference

CONSULTANTS

INDEPENDENT CONTRACTORS

GC §4526
GC §53060

Authority

Government Code provides that a district may contract with persons for furnishing special services and advice in the following matters: financial, engineering, legal, economic, accounting and administrative. Such persons are specially trained, experienced and competent to perform the special services as an independent contractor (consultant).

In determining if an independent contractor relationship exists, the district must be certain that the individual meets the necessary criteria and then would be paid on an accounts payable (commercial) warrant. Independent contractors are engaged in separately established bona fide businesses. They have the right to control the manner of performance of their services. The result of the work and not the means by which it is accomplished is the primary factor. Independent contractors typically perform services for more than one client.

If an employer/employee relationship exists, the individual should be paid on the payroll for tax withholding purposes.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished but also as to the details and means by which that result is accomplished.

IRS
Publications
15-A & 1779

The trend in recent Internal Revenue Service (IRS) audits of school districts indicates that all individuals working directly with students on an ongoing basis will most likely be classified as employees. The IRS has determined that workers performing the following duties are deemed to be employees:

- Administrators
- Teachers/Instructors
- Substitutes
- School Bus Drivers
- Clerical Staff
- Athletic Coaches
- Tutors
- Cafeteria Workers
- Counselors
- Examination Monitors
- Proctors
- Librarians
- Nurses
- Psychologists
- Intern Psychologists
- Individuals “filling in” on an Interim Basis
- Specialty Teachers (Art, Poetry, Music, etc.)

See Also:
Part 4, Exhibit
11

Refer to the Independent Contractor or Employee Guidelines in the Reference section for a list of factors used to determine employee versus independent contractor status. The Accounts Payable (Commercial) Warrant Audit desk will use these guidelines when auditing agreements. If it appears that an employer/employee relationship exists and/or any of the referenced Education Code sections apply, the district will be alerted.

Reference

EC §53060 -
§45060
EC §87000 -
§87833
EC §45100 -
§45451
EC §88000 -
§88263

See Also:
Part 3,
Temporary
Office
Services,
Page 52

See Also:
Part 1,
Reporting
Requirements
Page 17

If the district is uncertain as to the proper classification of the individual, a request may be sent to the IRS for a determination using IRS Form SS-8, Determination of Worker Status. The form may be downloaded from the IRS at:

<https://apps.irs.gov/app/picklist/list/formsPublications.html?value=SS8&criteria=formNumber&submitSearch=Find>. (enter SS-8 in the Search Box.)

It is recommended that the individual be paid via payroll until a determination is received from the IRS.

Education Code provided that services by individuals as specified in referenced sections are to be certificated or classified employees, not independent contractors. A district employee who agrees to perform additional services is to be treated as an employee for all purposes, and is to be paid on the district payroll even if the additional services are not related to his/her regular duties.

The compensation for the independent contractor should be as a fee for services performed, a report completed and accepted, etc., and should not include any employee-type fringe benefits, such as mileage reimbursement, etc.

Reporting Requirements

There are specific reporting requirements for independent contractors:
Employment Development Department

Districts must report within 20 days of the earlier of either:

- ◆ Entering into a contract with an independent contractor which equals or exceeds \$600;
or
- ◆ When the aggregate payments made to an independent contractor equal or exceed \$600

Franchise Tax Board (FTB)

Districts withhold 7% of gross payments made in excess of \$1,500 in a calendar year to non-resident independent contractors.

EC §45125.1 –
§45125.2

Fingerprinting

The Michelle Montoya School Safety Act enacted in 1997 requires contractors providing specified school, classroom, and school site services and pupil transportation to comply with certain fingerprinting requirements if they will have contact with pupils. This includes contractors performing the following services:

See Also:
Part 1,
Finger-
printing
Page 19

- School and classroom janitorial
- School site administrative
- School site grounds and landscape maintenance
- Pupil transportation
- School site food-related

Districts, except community college districts, should ensure that agreements with independent contractors performing such services include appropriate language to comply with these requirements. These requirements also apply to charter schools.

Reference

A school district contracting with an entity for construction, reconstruction, rehabilitation, or repair of a school facility where the employees of entity will have contact with pupils shall ensure the safety of the pupils by one or more of the following methods:

- The installation of a physical barrier at the worksite to limit contact with pupils
- Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has verified to not have been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1
- Surveillance of employees of the entity by school personnel

An entity that contracts with a school district for construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 45125.1 if one or more of the methods described in subdivision (a) is followed.

Internal Revenue Service Form 1099-MISC

See Also: Part 1, Reporting Requirements, Page 19

Districts must annually file Form IRS 1099-MISC for independent contractors to whom they have paid over \$600.

Refer to Reporting Requirements section for additional information.

The independent contractor/consultant agreement must include the following items:

- ✓ Type of contract, including the professional services to be rendered.
- ✓ Payment provisions: varies with the type of consultant services, often a per-hour cost or a total job price with progress payments based upon completion of the particular service.
- ✓ Parties involved: one party is the district and one party is the consultant/independent contractor. The agreement should specify the name(s) of the particular consultant(s) who will be performing the services if the contract is with a consulting firm and payments are to be made payable to the particular consultant rather than to the firm.

See Also: Part 1, Contracts, Page 14

✓

Minimum Documentation for Audit

- ◆ Fully executed contract, including signatures and payment provisions
- ◆ Board approval date
- ◆ Invoice, preferably signed by district official

HONORARIUMS, LECTURERS

EC §35161
EC §70902

Authority

“The principal of any public school may employ when so directed by the governing board of the school district, special lecturers well qualified in their subjects to speak before classes and assemblies of students of the school without the lecturer being required to hold a teacher’s credential or certificate.”

Reference	
	The president of any community college district is also authorized to employ lecturers in the same manner.
✓	<p><u>Minimum Documentation For Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed agreement, specifying the lecturer and payment provisions (a purchase order may also be used) ◆ Board approval date ◆ Invoice, preferably signed by district official
EC §17295 et seq. EC §81130 et seq.	<p>INSPECTORS (Division of State Architect)</p> <p>Authority</p> <p>School districts are required to hire inspectors to oversee the construction or alteration of school buildings. The inspector must be certified by the Department of General Services (DGS), Division of State Architect (DSA). A list of certified DSA school construction inspectors may be accessed via the DGS web site at: www.dsa.dgs.ca.gov (Select Project Tracking, School Construction Inspectors)</p>
EC §81133	“Construction or alteration” includes any construction, reconstruction, or alteration of, or addition to, any school building. The DSA shall approve or reject all plans for the construction or the alteration of any school building if the estimated cost exceeds \$25,000.
24 CCR §33(b)	<p>The inspector shall act under the direction of the governing board and architect or structural engineer as the board may direct. The governing board must provide for and require competent, adequate and continuous inspection by an inspection satisfactory to the architect and the Division of the State Architect. The inspector shall be responsible to the governing board for employment purposes. The inspector shall be responsible to the DSA for enforcement of the plans and specifications of the school project.</p> <p>Section 42 of CCR Title 24 sets forth the general scope of the project inspector’s responsibilities. Although Section 24 provides expressly that the project inspector acts under the direction of the project architect, there are significant duties which the project inspector must personally undertake. Aside from the reporting requirements imposed under Education Code, the project inspector is required under Title 24 to provide continuous on-site inspection of the construction work, maintain a job file and to notify the contractor of deviations in the work from the approved plans and specifications.</p>
GC § 53060	<p>This is a professional service contract and, as such, is not subject to competitive bidding provisions regardless of the cost of the contract.</p> <p>The contract must include the following items:</p> <ul style="list-style-type: none"> ✓ Type of contract, including the professional services to be rendered (e.g., “inspection services for (name of project)”) <ul style="list-style-type: none"> ✓ Term of contract ✓ Payment provisions: may be based on a monthly fee including expenses ✓ SB 854 language (DIR registration requirement)
<i>See Also: Part 1, Contracts, Page 14</i>	

Reference ✓	<p><u>Minimum Documentation For Audit</u></p> <ul style="list-style-type: none"> ◆ Full executed agreement ◆ Board approval date ◆ Proof of DIR Certification (if required under SB 96-2017) ◆ Invoice, approved by district official responsible for oversight of project <p>FOOD SERVICE MANAGEMENT CONSULTANTS</p> <p>Authority</p> <p>EC §45103.5</p> <p>CDE Nutrition Services Division Management Bulletin 04-2011</p> <p>School districts may enter into a contract for management consulting services relating to food service for a term not to exceed one year and may be renewed for up to four additional one-year terms. Automatic renewal clauses are prohibited. Contracted management services may not include monitoring, corrective action, or preparation of application materials</p> <p>Districts must conduct a competitive bidding process that includes a rationale for selection and awards the contract to the lowest bidder that best meets their needs.</p> <p>A contract for food service management consulting services shall not cause or result in the elimination of any food service classified personnel or position.</p> <p>A consultant may <u>not</u> perform food service duties, supervise food service personnel or manage any aspect of the food service operations. They may only advise food service personnel related to the management of the food service operation. Accordingly, school districts are responsible for procuring necessary food and supplies for the food service operation. The food services management consulting firm may not use its corporate bid process to purchase food and supplies for the district. When conducting Coordinated Review Effort assessments, Child Nutrition and Food Distribution Division (CNFDD) field consultants will determine a district's compliance with acceptable procurement methods. Districts should refer to the CDE website: https://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp for guidance and links to additional resources.</p> <p><i>See Also: Part 3, Cafeteria-Food, Page 64</i></p> <p>The contract should address the following issues:</p> <ul style="list-style-type: none"> ✓ The term does not exceed one year ✓ Specific services to be provided ✓ Designation of consultant's role (limited to consulting—not management services) and district's role ✓ Payment provisions ✓ Names of authorized district official and management consultant responsible for monitoring and fulfilling the terms and conditions of the agreement
✓	<p><u>Minimum Documentation For Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed copy of agreement, including authorized official signatures ◆ Board approval date ◆ Invoice, preferably signed by district official

Reference

LEASES

EC §17450
EC §81550

LEASE OR LEASE-PURCHASE: EQUIPMENT (Personal Property)**Authority**

“Any school district or any county superintendent of schools may, as lessee, enter into a lease or lease-purchase agreement for equipment or service systems with any persons, firm, corporation, or public agency. As used in this article “equipment” includes all of the following:

1. school buses,
2. other motor vehicles,
3. test materials, educational films, and audiovisual materials, and
4. all other items defined as equipment or service systems in the California School Accounting Manual.”

(For community college districts, reference is to the Community College Budget and Accounting Manual.)

EC §17451
EC §81551

“Before a lease or lease-purchase agreement may be entered into the lessee shall comply with all applicable provisions for bids and contracts...Each contract shall show the total price for an outright purchase or any item and also its total cost for the entire specified term of the contract.”

EC §17452
EC §81552

“The term of any lease or lease-purchase agreement shall not exceed the estimated useful life of the item but in no event shall the term exceed 10 years. A lease, but not a lease-purchase agreement, may be renewable at the option of the lessee and the lessor, jointly, at the end of each term at a rate not more than 12 percent annually above the rate set pursuant to the existing agreement (7% for community college districts). In no event shall the combined period of the original lease and renewals or extensions exceed 10 years. Any contract for the lease or lease-purchase of equipment or service systems which was in existence prior to April 22, 1975, shall remain in effect and such terms are hereby ratified.”

EC §17453
EC §81553

“As a lessor, a school district governing board is authorized to let, or let with option to purchase, any land, buildings, or equipment it determines is not needed for school purposes for a term extending to the end of the expected non-use of the land, buildings or equipment and under any conditions it deems reasonable. All such leases and leases with options to purchase to nonpublic agencies or individuals shall comply with the provisions of Sections 17545, 81450, 17546, 81452, 17547, 81453, 17548, and 81454.”

These contracts are subject to competitive bidding provisions.

California
Constitution,
Article XVI,
section 18

A lease is significantly different from an installment sales contract. “Installment” sales and “finance charges” are considered to violate the California Constitution which provides in relevant part that “No...board of education or school district shall incur any indebtedness or liability in any manner for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof...” Public agencies, without 2/3 voter approval, do not have the authority to enter into an installment sales contract.

LEASE WITH OPTION TO PURCHASE

The primary legal concern in connection with a lease with option to purchase is to avoid a violation of the constitutional debt limitation. A non-appropriations clause is required, for example:

Reference

“Termination and Non-Funding. Notwithstanding any of the foregoing provisions, if, for any fiscal year of this Agreement the governing body of Lessee fails to appropriate or allocate funds for future periodic payments under the Agreement, Lessee will not be obligated to pay the balance remaining beyond the fiscal year for which funds have been appropriated or allocated and either party hereto may terminate the Agreement. Upon termination of the Agreement by either party hereto as provided herein, Lessee will return the leased property to Lessor at Lessee’s expense, free of liens and encumbrances, in the same condition as when received, normal use, wear and tear excepted, at a location within the State of California designated by Lessor. Upon termination of the Agreement as provided herein, Lessor will recalculate the time balance and refund to Lessee any portions of interest or other charges unearned or allocable to fiscal years subsequent to the effective date of such termination or charge Lessee all amounts due and payable to Lessor to date of termination, including the applicable portion of the unpaid current year’s interest and principal.”

Inclusion of this language enables the district to terminate the agreement at the end of any fiscal year if the governing board does not budget funds under specific circumstances. If a boilerplate agreement from the contractor/vendor is used, the Santa Barbara County Counsel language, or a similar clause, should be included by the district before the agreement is executed for multiple years.

ASSIGNMENT OF LEASE

Where a lease for several years, with option to purchase has been awarded to a bidder, the bidder will frequently assign the lease to a bank or other financial institution in order that the bidder may receive full payment at the beginning of the contract. In such cases, the school district will normally be asked to review the form of “Assignment and Warranty of the Title” which the bidder (assignor) executes in assigning the lease to the financial institution (assignee), and to execute an “Acknowledgement and Consent to Assignment.” Additionally, an opinion of counsel addressed to the financial institution concerning the validity of the lease is usually requested. Timely notification of a lease should be given to your legal counsel to avoid a delay in the processing of the lease.

The agreement which may be assigned must be the one which the bidder was required under the bid documents to enter into. A school district that issued a competitive bid for a lease may not consent to the assignment of an agreement that would be substantially different and/or contain provisions beneficial to the assignee that were not included in the bid specifications.

Contracts must include the following items:

- ✓ Type of contract, including the item or items of equipment; e.g., 81-passenger school bus, which is being leased or is under lease-purchase agreement
- ✓ Term of contract: may commence on the date of acceptance of the equipment/personal property. In the case of school buses, for example, the delivery date may be much later than the date of the agreement. If date of acceptance is necessary to determine the term, the district should provide this information when the first payment is processed.
- ✓ Payment provisions: lease or lease-purchase is usually paid in a number of equal payments over the term of the lease. Monthly, quarterly, or annual payments in advance is standard while district has continued possession of the property. State sales tax may be applied to each payment.

*See Also:
Part 1,
Contracts,
Page 14*

Reference	
	<ul style="list-style-type: none"> ✓ Non-funding/termination (Non-appropriations) clause, if agreement is for multiple years.
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed lease or lease-purchase agreement, including authorized signatures and payment schedule ◆ Copy of Acknowledgement and Consent to Assignment,” if applicable Board approval date ◆ Invoice, preferably signed by district official <p>LEASE/LEASE-PURCHASE: RELOCATABLES/MODULAR/PORTABLE BUILDINGS</p>
PCC §20111 PCC §20651	Authority
EC §17403	<p>These contracts are subject to the competitive bidding provisions for public projects (\$15,000 labor and materials). The <u>total</u> amount of the lease should be considered for bidding requirements. The term of any lease or agreement shall not exceed 40 years.</p> <p><i>Note: Competitive bidding does not apply to relocatables leased under the authority of the State Relocatable Classroom Program (Department of General Services), as they have been competitively bid by the State of California.</i></p>
EC §17405 EC §17285	<p>Any lease or agreement shall be subject to the following requirements:</p> <ul style="list-style-type: none"> ✓ A building or structure which is to be used for school purposes shall be subject to the provisions of Education Code Section 17280 et seq. and Section 17365 et seq. A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of “school building” as contained in Section 17368, shall not be considered to be a “school building” within the meaning of Section 17283. ✓ ECS 17405(a) shall not apply to trailer coaches used for classroom or laboratories if the trailer coaches conform to the requirements of Health and Safety Code Section 18000 et seq., and the rules and regulations promulgated thereunder concerning mobile homes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes. ✓ The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit.
EC §17405(c)	
EC §17070.15	“Relocatable structure” is any structure that is designed to be relocated.
<i>See Also: Relocatable/ Modular/ Portable Buildings, Page 101</i>	“Portable classroom” means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets and, with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior wall, has a floor area not in excess of 2,000 square feet.

Reference

See Also:
Part 1,
Contracts,
Page 14

Part 3,
Lease or
Lease-
Purchase:
Equipment,
Page 97

✓

Contracts must include the following items:

- ✓ Type of Contract—includes relocatable structure(s) which is being leased or is under a lease-purchase agreement. Districts may modify these documents for a straight purchase. “New” or “used” relocatable structures may be specified.
- ✓ Term of Contract—term may commence on the date of acceptance of the relocatable structure. If date of acceptance is necessary to determine the term, the district should provide this information when the first payment is processed.
- ✓ Payment Provisions—lease or lease-purchase is usually paid in a number of equal payments over the term of the lease. A monthly or annual payment in advance is standard while district has continued possession of the relocatable building. State sales tax may be applied to each payment or may be included in each payment. If vendor bills sales tax at the beginning of the contract for the entire cost of the lease, such provision **MUST** be spelled out in the lease document as this is not the common practice.
- ✓ In certain circumstances, contractors have received payments for materials/labor for the installation of relocatable structures in advance of the standard payment provisions of the lease or lease-purchase. If any payment other than the periodic lease amount is required, the specific payment provision must be included in the agreement as this is not part of the standard agreement.

Minimum Documentation for Audit:

- ◆ Fully executed lease or lease-purchase agreement, including authorized signatures and payment schedule
- ◆ Board minutes excerpt approving award of bid, if applicable
- ◆ Board approval date
- ◆ Invoice, preferably signed by district official

EC §17280 et
seq.
EC §81529
EC §81530
EC §52308
EC §17405

See Also:
Part 1,
Contracts,
Page 14

Part 3,
Lease or
Lease-
Purchase:
Relocatables,
Page 97

LEASE/RENTAL OF FACILITIES

Authority

Any building leased for a term in excess of three years, or under a lease-purchase agreement, is subject to the provisions of the Field Act unless otherwise excepted. Examples of exceptions include: adult education facilities “offsite location”, one-story ROP buildings for ten-year maximum, facility into which pupils or teachers are not required to enter.

Lease/rental agreements must include the following items:

- Type of Contract—includes the facility, address, and purpose for use
- Term of Contract—is limited on the type of use proposed by the district. Generally, ECS 81530 authorizes a community college district to lease buildings and other facilities for a period not to exceed 12 years. This includes administrative offices, warehouses, athletic facilities, outdoor assembly facilities, auditoriums, quarters for adult education, transportation facilities, and communication facilities.

Reference

California
Constitution
Article XIII
Section 3(d)
RTC §202.2

- Payment Provisions—first and last month's payments in advance are standard in the industry upon occupancy by the district of the facility. Advance payment per month is also an accepted practice given the continued use of the facility by the district. A security deposit for keys, etc., is also appropriate if the agreement provides for a refund of the total amount if the facility is returned in good condition, normal wear and tear accepted.

Note: Real property leased by school districts is exempt from property taxes. Districts should ensure that if the lessor claims the exemption, the district receives a reduction in rental payments or a refund, if already paid, in an amount equal to the reduction in taxes. If the lessor does not claim the exemption, the school district should file a claim for a refund directly with the Santa Barbara County Tax Assessor's Office.

✓

Minimum Documentation for Audit

- ♦ Fully executed lease, including authorized signatures and payment schedule
- ♦ Board approval date
- ♦ Invoice, preferably signed by district official

Reference	
	<u>PERSONNEL SERVICES</u>
	SECURITY SERVICES
EC §38005	<p>Authority</p> <p>School districts are expressly allowed to contract with “a private licensed security agency to insure the safety of school district personnel and pupils and the security of the real and personal property of the school district” whenever “the personnel normally required to provide such service fail to do so because of an emergency.” The term “emergency” for purposes of Section 38005 includes, for example, the following: war, epidemic, fire, flood, work stoppage; or whenever such an emergency necessitates additional security services.</p>
!	SB 1419, effective January 1, 2003, limits the flexibility that school and community college districts have to choose between permanent employees or contractors.
EC §45103.1 EC §88003.1	<p>Contracted services are subject to competitive bidding provisions (\$92,600 as of 2019). Continuing contracts for services may not exceed a term of five years.</p>
<p><i>See Also:</i> Part 1, Anti- Contracting, Page 16</p> <p>Part 1, Contracts- Page 14</p> <p>Part 1, Michelle Montoya School Safety Act, Page 19</p>	<p>The contract must include the following items:</p> <ul style="list-style-type: none"> ✓ Type of Contract—including the services to be provided ✓ Term of Contract—not to exceed a period of five years ✓ Specific payment provisions (e.g., flat monthly rate, hourly rate - show details if rates differ for overtime, weekends type/level of worker, etc.) ✓ Fingerprint certification statement, as applicable ✓ Appropriate insurance coverage provisions
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed contract with authorized signatures and payment provisions ◆ Board approval date, including excerpt from board minutes with specific finding that an emergency exists (<i>merit system</i> districts only) ◆ Invoice, preferably signed by district official
	TEMPORARY OFFICE SERVICES
	<p>Authority</p> <p>SB 1419, effective January 1, 2003, limits the flexibility school and community college districts have to choose between permanent employees or contractors. Personal service contracting is permitted in limited circumstances.</p>
EC §45103.1 EC §88003.1	
EC §45256 EC §38005 EC §88003	<p>Education Code §45256 specifically prohibits <i>merit</i> system districts from subcontracting out for temporary services outside the classified service unless a specific statute exists; e.g., districts may contract for <u>security services</u> under EC §38005 or “<u>special services</u>” under GC §53060.</p> <p>In order for a district to contract with an agency for providing short-term personnel services, the district must demonstrate that the provisions of GC §53060 are applicable because the district</p>

Reference

GC §53060

does not have employees who can perform the services or cannot employ persons for that purpose by following required employment procedures; that the services are “special”; and that the persons performing the services are “specially trained, experienced and competent” to perform the special services.

EC §45140

Governing boards of *non-merit system* districts may contract with temporary help employment agencies to fill management and confidential positions, not subject to collective bargaining. Contracts cannot exceed 60 working days per position per leave and cannot exceed two per year.

See Also:
Part 1,
Anti-
Contracting,
Page 16

The contract should include the following items:

- ✓ Type of Contract—including the services to be performed
- ✓ Specific payment provisions; (e.g., flat monthly rate, hourly rate - show details if rates differ for overtime, weekends, type/level of worker, etc.)
- ✓ Fingerprint certification statement, as applicable
- ✓ Appropriate insurance coverage provisions

Part 1,
Contracts,
Page 19

✓

Minimum Documentation for Audit

- ◆ Fully executed contract with authorized signatures and payment provisions
- ◆ Board approval date and certification regarding GC §53060: no employee available; special services; and trained person as stated above; certifying per EC §45140 or EC §35160 (*non-merit system* districts only)
- ◆ Invoice, preferably signed by district official

Reference

PUBLIC AGENCY AGREEMENTS

EC §35161
EC §70902

INTERAGENCY/INTERDISTRICT AGREEMENTS/MEMORANDUMS OF AGREEMENT**Authority**

Districts often provide assistance to other districts in the areas of transportation, training, “on loan employees,” among other services.

Such arrangements should be documented via an interagency/interdistrict agreement or memorandum of agreement (MOA) and address the following issues:

- The names of the districts/agencies providing and receiving services
- Specific services to be provided (i.e., purpose of the interagency agreement)
- Designation of the general roles and responsibilities of districts/agencies providing and receiving services
- Fiscal responsibilities, including how services will be paid for, when, methods of invoices, etc.
- Time period covered by agreement
- Name of authorized district/agency officials responsible for monitoring and approving the agreement

✓

Minimum Documentation for Audit

- ◆ Copy of fully executed agreement (including authorized official signatures)
- ◆ Invoice, preferably signed by district official

EC §8482.5 et
seq.

PROGRAM PROVIDERS: (BEFORE AND AFTER SCHOOL PROGRAMS)**Authority**

Districts may receive grants from local and state sources to operate programs before and/or after the regular school day. They often will contract with a provider, such as the YMCA, Boys & Girls Club, or other nonprofit community organizations, to operate the program on their behalf.

*See Also:
Part 1,
Contracts,
Page 14*

These contracts **are not** subject to competitive bidding requirements.

A contract must be executed between the program provider and the school district and include the following items:

- ✓ Purpose of Contract—including type of program(s) to be provided, student population to be served, hours of operation, location(s), staff qualifications, and other provisions as may be required by the granting authority.
- ✓ Term of Contract—usually limited to one year.
- ✓ Payment Provisions—usually paid in arrears on a monthly basis. If invoices are based on actual employee costs (i.e., salaries and benefits), a breakdown of those charges should be included with the invoices.

Reference

- ✓ Other Considerations—including fingerprinting/background checks, insurance requirements, and identification of the contract managers should be specifically included.

✓

Minimum Documentation for Audit

- ◆ Fully executed agreement, with authorized signatures and payment provisions
- ◆ Board approval date
- ◆ Invoice, preferably signed by a district official

EC §56366

NON-PUBLIC SCHOOL/NON-PUBLIC AGENCY**Authority**

EC §39806

Before any non-public school agreement is sent to the Accounts Payable (Commercial) Warrant Audit desk, the appropriate County Office SELPA (special education local plan area) Director will review the agreement (master contract), as well as the program for the individual student (IEP). Amendments, if necessary, are coordinated through that manager, as well as discrepancies on payments. Rates are negotiated on an annual basis. Contracts not negotiated by the start of the new years are subject to prior year rates for a period of up to ninety days.

A transportation agreement may be executed in conjunction with the individual agreement. This is usually executed with the parent or legal guardian and based upon mileage specified in the agreement. Payment is invoiced in arrears. Air fare to transport the student and/or parent to a distant non-public school in lieu of mileage must be specified in any such agreement.

Under current law, the district executes a general agreement (master contract) with the non-public school, as well as individual service agreements for each student.

Contracts must include the following items:

- ✓ Term of Contract—is usually for one school year or a portion of one school year. Multiple-year contracts are not standard.

NOTE: If a renewal contract has not been finalized or developed by a new fiscal year, invoices shall be billed at the rates of the prior fiscal year, with the difference billed once the new contract is executed.

- ✓ Payment Provisions—invoices are based upon the daily rate times the number of days of service, and are paid in arrears.

✓

Minimum Documentation for Audit

- ◆ Fully executed master contract, including signature of SELPA director and governing board approval date
- ◆ Individual service agreement for each student served, OR Interim Written Approval for a maximum of 90 days beginning with the anticipated student start date.
- ◆ Attendance roster signed by the non-public school agency

Reference	<ul style="list-style-type: none"> ◆ Invoice signed by the district special education representative responsible for the contract ◆ Invoice, preferably signed by district official
	JOINT USE AGREEMENTS
State Allocation Board “Public Construction Cost Reduction Guidelines”	<p>Authority</p> <p>Joint use is defined by the State Allocation Board as “a facility of any type, core or otherwise, that has a shared use by, and benefit to, two or more entities through a contractual agreement; the development of which, including the cost of land and improvements, plus operation if it is part of the development agreement, results in a lower initial project cost to the District, as compared to the District having to provide a project that meets the District’s needs individually.”</p>
EC §10900 et seq. GC §6500 et seq.	<p>Typical joint use projects include multipurpose rooms, libraries, gymnasiums, parks, playgrounds, or any other type of facility that can be used by both the district and the community.</p> <p>Components of a joint use agreement may include the following:</p> <ul style="list-style-type: none"> Purpose of the Agreement Definitions Project Description Rent/Lease Terms Contract Period Hours of Operation Maintenance Procedures Conflict Resolution Procedure Termination of Agreement Hold Harmless Clause Severability Clause Designation of Contact Persons for Notices Approval
	<u>Minimum Documentation for District</u>
	<ul style="list-style-type: none"> ◆ Copy of fully executed joint use agreement, including payment provisions ◆ Board approval date ◆ Invoice, signed by district official responsible for the agreement
	TRANSPORTATION: STUDENTS
EC §39800	<p>Authority</p> <p>“The governing board of any school district may provide for the transportation of pupils to and from school whenever in the judgment of the board such transportation is advisable and good reasons exist therefor.”</p>
EC §39802 PCC §20111	<p>In order to procure the service at the lowest possible figure consistent with proper and satisfactory service, bidding for transportation services must be done if the contract is an expenditure of more than \$10,000 with a person or corporation other than common carrier,</p>

Reference

Best Best &
Krieger Legal
Opinion
August 2010



*Educational
and
recreational
Services, Inc.
v. Pasadena
Unified School
District*, 65
Cal. App. 3d
775 (1977)

municipally owned transit system, parents or guardians of pupils being transported. The governing board may let the contract to other than the lowest bidder. *Charter bus companies and other private companies are not considered to be “common carriers” and must be competitively bid.*

A “municipally owned transit system” is defined as a transit system owned by a *city, or by a district created by Public Utilities Code sections 24501, et seq.* Although the statute provides that the governing board may let the contract to other than lowest bidder, the courts have held that it does not authorize a district to accept a higher bid for the same services and comparable acceptability. *Educational & Recreational Services, Inc. v. Pasadena Unified Sch. Dist.* (1977) 65 Cal. App. 3d 775. By using these words, the legislature gave the district the right to use judgement and discretion in awarding the contract and did not bind it to accepting the lowest bidder provided it first determined that the prevailing bidder could supply the better service under the enunciated standard (Page 782). A district cannot act arbitrarily and, if the award of a contract is challenged, must be able to demonstrate the factors that establish that the prevailing bidder could supply the better service (Page 783).

EC §39803

Note: Although the statute provides that the governing board may let the contract to other than the lowest bidder, the courts have held that it does not authorize a district to accept a higher bid for the same services and comparable acceptability. A district cannot act arbitrarily and, if the award of a contract is challenged, must be able to demonstrate the factors that establish that the prevailing bidder could supply the better service.

EC §17596

Continuing contracts for the furnishing of transportation of pupils in school districts to and from school, if made, shall be made for a term not to exceed five years. Such contracts shall be renewable at the option of the school district and the party contracting to provide transportation services, jointly, at the end of each term of the contract. The contract as renewed shall include, other than the rates of the previous contract, all of the terms and conditions of the previous contract, including any provisions increasing rates based on increased costs.

EC §17450
et seq

Continuing contracts may be made for the lease or rental of school buses, not to exceed five years, except that if such a lease or rental contract provides that the district may exercise an option either to purchase the buses or to cancel the lease at the end of each annual period during the period of the contract, such contract may be made for a term not to exceed ten years.

Notwithstanding any other provisions of law to the contrary, continuing contracts executed under the provisions of this section may be negotiated annually within the contract period when economic factors indicate such negotiation is necessary to maintain an equitable pricing structure. Such renegotiation shall be subject to the approval of both contracting parties.

See Also:
Part 3,
Lease or
Lease-
Purchase:
Equipment,
Page 97

Any rental, lease, or lease-purchase of a school bus shall comply with all applicable provisions of Education Code §17450 et seq.

The contract should contain the following items:

- ✓ Type of Contract—should specify type of transportation being performed and the vehicle being used to provide the transportation, e.g., “bus transportation for athletic events.”
- ✓ Term of Contract—is generally tied to a particular school year, although multiple year contracts are authorized by ECS 17596 and limits term of continuing agreements for services to five years. ECS 39803 authorizes ten year contracts under certain circumstances.

Reference

*Part 1,
Michelle
Montoya
School Safety
Act,
Page 19*

- ✓ Payment Provisions—are often based upon an amount per mile of transportation for use of the equipment, and an amount for the driver. An estimated base amount monthly in advance may be paid and adjusted at the end of the month by invoice but this particular method must be spelled out in the contract.
- ✓ Insurance Provisions
- ✓ Fingerprint certification statement

✓

Minimum Documentation for Audit

- ◆ Fully executed contract with authorized signatures and payment provisions
- ◆ Excerpt from board minutes showing award of bid to vendor and board approval date
- ◆ Invoice, preferably signed by district official

Reference

SERVICES : NON-CONSTRUCTION

Authority

PCC §20111
PCC §20651
PCC §20656

Non-construction services are subject to competitive bidding provisions (\$92,600). For description purposes, “Construction” refers to public projects. Examples of non-construction services include security services, trash collection, bottled water drinking service, and audiovisual services.

An exception to the competitive bidding requirement for non-construction services is provided for “special services and advice” under Government Code Section 53060. Such services include: financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. Common examples of these exceptions include the district’s independent auditor, legal counsel and architects.

Note: *Merit* system districts may only contract for security services when the personnel normally required to provide such service fail to do so because of an emergency. The governing board must, by majority vote, make a specific finding to that effect.

An agreement should be executed between the vendor and the school district and contain the following items:

- ✓ Type of Contract—including the services to be rendered
- ✓ Term of Contract—not to exceed a period of five years
- ✓ Payment provisions

LANDSCAPE MAINTENANCE – PERSONAL SERVICES (CONTRACTING OUT)

Authority

EC §35160
EC §70902

Recent court decisions support the proposition that non-merit school districts may contract for personal services under the permissive authority of the Education Code. If a non-merit school district wishes to enter into such contract is to save labor costs.

EC §45256

EC §38005
GC §53060

The Education Code specifically prohibits merit system districts from contracting for personal services outside the classified service unless a specific statutory authority exists; e.g., districts may contract for security services or “special services” as provided for in the Government Code.

EC §45125.1-
§45125.2

Non-merit school district contracting for landscape maintenance services must comply with the fingerprinting requirements of the Education Code which requires that the contractor’s employees must have their criminal histories checked by the Department of Justice if the district determines they will have more than limited contact with the district’s pupils. The contractor must certify in writing to the district that none of its employees who may come in contact with students have been convicted of a serious or violent felony.

See Also:
Part 1,
Michelle
Montoya
School Safety
Act,
Page 19

Landscape maintenance service contract are subject to competitive bidding if the cost exceeds \$50,000 (as adjusted annual by the superintendent of public instruction). Continuing contracts for services may not exceed a term of five years.

PCC §20111
EC §17596

Prevailing wages apply.

The contract must include the following items:

- ✓ Type of contract, including the services to be provided

Reference

- ✓ Term of contract, not to exceed a period of five years
- ✓ Specific payment provisions (e.g., flat monthly rate, hourly rate – show details if rates differ for overtime, weekends, type/level of worker, et.), whether supplies are included or to be itemized separately, etc.
- ✓ Fingerprint certification statement, as applicable
- ✓ Appropriate insurance coverage provisions

✓

Minimum Documentation for Audit

- ◆ Fully executed contract, including authorized signatures and payment provisions
- ◆ Board approval date
- ◆ Invoice signed by designated official responsible for overseeing the services
- ◆ Proof of DIR Registration

MAINTENANCE AND REPAIRS

PCC §20111
PCC §20651
PCC §20656

Authority

These contracts **are** subject to competitive bidding provisions.

*See Also:
Part 2,
Emergency
Waivers,
Page 29*

If the repair work involves publicly owned, leased, or operated facilities, it is subject to the public project limit of \$15,000. Only minor and routine repair work falls under the classification of maintenance at the higher bid limit of \$92,600.



If it is expected that the repair work is going to exceed the statutory bid limits and is attributable to an emergency situation (e.g., roof damage due to severe weather), the district may seek an emergency waiver from the County Superintendent of Schools. This requires the district governing board to unanimously vote to adopt an emergency resolution. An emergency waiver only relieves the district from the competitive bidding requirement. All applicable bonds must still be obtained (i.e., payment bond for public project work exceeding \$50,000).

A contract should be executed and contain the following items:

- ✓ Type of Contract—should include scope of repair work to be performed
- ✓ Payment Provisions—should specify labor and materials separately

*See Also
Part 3,
Public
Projects,
Page 89*

Minimum Documentation for Audit

✓

- ◆ Fully executed contract, with authorized signatures and payment provisions
- ◆ If repairs were made under an emergency waiver provision, provide a copy of the waiver letter with the audit backup specifically indicating the contractor names covered by the emergency waiver
- ◆ Invoice, preferably signed by district official

Reference

MAINTENANCE OF EQUIPMENT (ADVANCE PAYMENTS)**Authority**

EC §35160

EC §70902

Formerly, the Education Code specified which items or services may be paid for in advance, such as: postage stamps, admission tickets, permits and services provided by other governmental agencies, subscriptions, payments on leases of real property, and maintenance of equipment (former EC §40013). Since that Education Code was repealed, the permissive EC §35160 is relied upon with regard to advance payments. Payments customarily are not made in advance and should only be made when absolutely necessary and in accordance with governing board policies. Advance payment for goods is rarely advisable.

Maintenance contracts are subject to competitive bidding provisions (\$50,000 as adjusted annually by the superintendent of public instruction) and must include the following items:

- ✓ Type of contract – should include maintenance services to be performed (e.g., maintenance of telephone equipment). If a single contractor is maintaining much equipment, sufficient information to identify the equipment being maintained should be included for audit purposes.
- ✓ Payment provisions – should specify monthly, quarterly, or annual amount. Must state that payments are to be made in advance; otherwise, payments shall be made in arrears.
- ✓ Term of contract – is limited to one year if the payment is made in advance. If payment is made in arrears, the term may be up to five years. Automatic annual renewal is a standard provision of “boiler plate” agreements prepared by the contractor. This automatic renewal must be modified or deleted by the district in accordance with the above limitations. Also, if boiler plate specifies that the agreement is in accordance with the laws of a state other than California, it should be changed to read “State of California.”

EC §17596

*See Also:
Part 1,
Contracts,
Page 14*

✓

Minimum Documentation for Audit

- ◆ Fully executed agreement with authorized signatures and payment provisions
- ◆ Board approval date
- ◆ Invoice with signature of district official responsible for overseeing the maintenance services

Reference

EQUIPMENT, MATERIALS, AND SUPPLIES

ART SUPPLIES

Authority

EC §32060 et seq.

School districts may not order or purchase art or craft materials deemed to contain a toxic substance, as defined, for use by K-6 students. School districts may not order or purchase any substance defined as a toxic substance, causing chronic illness, for use by students in grades 7 to 12, inclusive, unless it meets required labeling standards or is exempt from labeling requirements.

EC §32066

Guidelines for the safe use of art and craft materials and a list of art and craft materials that cannot be purchased for use in grades K-6 are available at the Office of Environmental Health Hazard Assessment website: www.oehha.org/education/art/getart.html

Minimum Documentation for Audit

- ◆ Purchase order
- ◆ Invoice

BOOKS AND INSTRUCTIONAL MATERIALS

PCC §20118.3
EC §81651

Authority

The governing board of a school district may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of its schools without taking estimates or advertising for bids.

Additionally, the State Board of Education adopts instructional materials and contracts with various publishers from which school districts make purchases. Specific information about the publishers and pricing may be obtained from the California Department of Education website: www.cde.ca.gov/ci/cr/cf/ap1/plsearch.asp

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Various funding sources are provided to school districts for instructional materials and library materials (e.g. Instructional Materials Funding Realignment Program “IMFRP”) and there are several restrictions associated with their use. Districts should use caution to ensure that purchases comply with such regulations. Specific information about the funding and use policies are available from the California Department of Education website: www.cde.ca.gov/fg/fo/sf/

✓

Minimum Documentation for Audit

- ◆ Purchase Order
- ◆ Invoice

BUSES

EC §17912.3
VC §27316

The California Highway Patrol Commercial and Technical Section controls the equipment requirements on all school buses operated in California. All school buses manufactured on or after January 1, 2004 for Type 2 school buses or January 1, 2005 for Type 1 school buses, shall

Reference

See Also:
Part 1,
Surplus
Personal
Property,
Page 10

Part 3,
Surplus
Property,
Page 68

EC §17542
EC §42303

be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system. The Notice to Bidders shall provide that the school buses at the time of delivery must meet all state and federal requirements and must pass inspection by the Department of the California Highway patrol. The notice should also specify that the school bus is to be guaranteed for a stated period or number of miles.

Districts may sell used school buses to another school district, subject to certain restrictions:

- The selling price and terms of sale shall be fixed by the governing boards of the school districts affecting the sale and be approved by the county superintendent of schools.
- Small districts (ADA below 2,501) utilizing the school bus grant program offered by the California Department of Education should review EC §42303 for additional restrictions.

CAFETERIA: CAPITAL IMPROVEMENTS AND EQUIPMENT

Authority

C §38081

The governing board of any school district may establish cafeterias in the schools under its jurisdiction whenever in its judgment it is advisable to do so.

EC §38091

The governing board may make expenditures from the Cafeteria Fund for the construction, alteration, or improvement of a central food processing plant; for the installation of additional cafeteria equipment; and for the lease or purchase of vehicles that will be used primarily in support of the cafeteria. Such expenditures are subject to competitive bidding provisions for public projects and equipment.

EC §38100

The cost of facilities and initial equipment for cafeterias must be paid from the General Fund, Building Fund, or other fund from which such capital outlay may be legally paid. Replacement and building maintenance of equipment are allowable charges against the Cafeteria Fund (with prior USDA approval) except when board resolution makes them a charge against the General Fund. The governing board may, at any time within five years, reimburse school district funds from the Cafeteria Fund.

Title 7, CFR,
Parts 210,
220, 3015,
3016, 3019
Title 2, CFR,
Parts 225, 230

School Food Authorities participating in the Federal School Nutrition Programs must observe both state and federal limitations on the use of cafeteria funds. Purchases of equipment greater than the capitalization threshold (\$5,000) must have U.S. Department of Agriculture (USDA) approval, of which they have delegated conditional approval authority to the California Department of Education.

Refer to the CDE Nutrition Services Division Management Bulletin MSD-SNP-07-2013 at the following website: www.cde.ca.gov/ls/nu/sn/mbnsdsn072013.asp

✓

Minimum Documentation for Audit

See Also:
Part 3,
Public
Projects, Page
89

- ◆ For facility-related (i.e., public project) work, copy of executed contract, including type of work to be performed, payment provisions, and authorized signatures.
- ◆ USDA/CDE approval for equipment purchases over \$5,000, if using cafeteria funds.
- ◆ If public project work, bid form, board approval, contract, CSLB #, DIR#.

Reference

	<ul style="list-style-type: none"> ◆ For equipment-only purchases (i.e., no public project work involved), copy of purchase order or purchase agreement showing item(s) purchased and amounts. If purchase exceeds \$50,000 (as adjusted annually by superintendent of public instruction), governing board excerpt showing bid summaries and award of bid. ◆ Invoice or payment application
PCC §20660 EC §38083	CAFETERIA: FOOD
CDE Management Bulletin NSD- SNP-03-2008	Authority School districts and community colleges may purchase perishable foods and seasonable commodities needed in the operation of cafeterias without advertising for bids. The Federal Drug Administration defines perishable food that is not heat-treated, not frozen, and not otherwise preserved in a manner to prevent the quality of the food from being adversely affected, if held longer than seven calendar days under normal shipping and storage conditions.
!	Perishable foodstuffs and seasonal commodities needed in the operation of cafeterias may be purchased by the school district in accordance with rules and regulations for such purchases adopted by the governing board.
EC §35182.5(a)	Food Items should be bid if they can be supplied incrementally throughout the year and kept frozen or refrigerated without losing their necessary freshness and annual (i.e., 12 consecutive months) purchases are expected to exceed the state bid limits for goods and services. Note: The California Education Code exempts perishable foods from competitive bidding; however, federal requirements call for competitive bidding when purchase cost exceeds \$150,000 or the state bid limit if it is more restrictive. Districts are required to issue bids for any expenditure of federal funds exceeding \$10,000.
<i>See Also: Part 3, Food Service Management Consultants Page 46</i>	A food service management consultant hired by the district may <u>not</u> use its corporate bid process to purchase food and supplies for the district. The school district governing board may enter into a contract that grants exclusive advertising rights, or grants the right to the exclusive sale of carbonated beverages throughout the district, only after holding a public hearing to adopt a policy that ensures the district has internal controls in place regarding the expenditure of public funds. The contract must be entered into on a competitive basis or through the issuance of a Request For Proposal (RFP). Additional information, including “The Food Buying Guide for Child Nutrition Programs,” may be accessed via the California Department of Education website at: www.cde.ca.gov/ls/nu/
✓	<u>Minimum Documentation for Audit</u> <ul style="list-style-type: none"> ◆ Purchase order ◆ Certification of compliance with bidding requirements, if applicable ◆ Invoice

Reference

California
School
Accounting
Manual,
Procedure 770

CAPITAL OUTLAY**Authority**

EC §35168

One common accounting challenge is that of distinguishing between supplies and capitalized equipment. Whether an item should be classified as capitalized equipment or as supplies is determined by the length of time the item is serviceable and on its contribution to the value of the physical assets of the local education agency (LEA). Supplies are of an expendable nature that are consumed or worn out, deteriorate in use, or are easily broken, damaged, or lost.

Education Code Section 35168 requires LEAs to maintain an inventory of equipment whose current value exceeds \$500. This requirement does not mean that LEAs must capitalize equipment costing more than \$500. While all capitalized items should be inventoried, not all inventoried items should necessarily be capitalized.

PCC §20111
PCC §20651

For purposes of this Accounts Payable (Commercial) Warrant Claims Manual, “capital outlay” refers to those items that are inventoried.

Capital outlay (equipment) must be competitively bid if the purchase exceeds \$92,600. Issues unique to the purchase of some capital outlay items are identified below:

PCC §20118.2
(K-12 districts
only; no
parallel
authority for
community
college
districts)

COMPUTERS, SOFTWARE, TELECOMMUNICATIONS EQUIPMENT, MICROWAVE EQUIPMENT, AND RELATED ELECTRONIC EQUIPMENT AND APPARATUS

Districts may procure by detailed Request For Proposal (RFP) and competitive negotiation process computer, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus provided that the contracts are not for construction or for the procurement of any product that is available in substantial quantities to the general public. Published notice is required and the RFP must identify all significant evaluation factors, including price and their relative importance. Procedures for technical evaluation of proposals must be in place. If award is not to the lowest priced bidder, the district “shall make a finding setting forth the basis for the award.”

PCC §20118.1
EC §81645

*Also See:
Part 1,
Bidding
Exceptions,
Page 7*

DATA PROCESSING SYSTEMS AND SUPPORTING SOFTWARE

The governing board of any school district may contract with an acceptable party who is one of the three lowest bidders for the procurement or maintenance, or both, of electronic data-processing systems and supporting software in a manner the board deems appropriate. The only manner in which it may be determined which of the bidders are the lowest is if the bidders have responded to and agreed to meet the same bid specifications. A district desiring the flexibility to award to one of the three lowest responsible bidders must advise bidders of the fact in the bid documents and should refer to Public Contract Code section 20118.1.

Name brand and generic computers are subject to the \$92,600 competitive bid limit. An exception is Apple computers, which may only be purchased directly from Apple to receive discounted educational pricing. A sole source exception exists with regard to Apple name-brand computers only.

!

Districts should exercise caution when purchasing computers that require cabling or other facility-related work to perform according to the intended purpose (e.g., a network). If the project includes a public works component (e.g., cabling), the lower public project bid limit of \$15,000 will apply.

Reference

PRC §42460-
§42461

HSC
§25214.9 et
seq.

ELECTRONIC WASTE (E-WASTE) RECYCLING FEE

Recently, the State Legislature passed SB 20 which requires that, as of January 1, 2005, all computer retailers collect an electronic waste recycling fee for all computer monitors, laptop computers (Cathode Ray Tubes and Liquid Crystal Display), and televisions with a screen greater than 4" that contain a CRT. The fees are deposited into a special state fund to support computer recycling centers. The centers will provide a place where e-waste can be returned and recycled in an environmentally sound manner—all at no additional cost.

Refer to the California Integrated Waste Management Board's website at: <https://www.calrecycle.ca.gov/> for an up-to-date list of approved computer recyclers that accept materials covered by the new fee.

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Minimum Documentation for Audit

- ◆ Purchase order or purchase agreement
- ◆ If purchase exceeds bid limit, governing board excerpt showing bid summaries and award of bid. If not awarded to the lowest bidder, provide the finding justifying the basis for the award.
- ◆ If district is purchasing surplus property from another school district, excerpt from governing boards of both districts approving the sale/purchase and setting the selling price and terms of sale. Also requires the approval of the County Superintendent of Schools. Provide a copy of approval letter.
- ◆ Invoice or payment application

FIRST AID AND SUPPLIES

EC §49423
EC §49480

Authority

Medications are substances used to prevent, diagnose, cure or relieve signs and symptoms of disease. Education Code regulations for medication administration in school include over-the-counter products. The school must have written permission from the parent, as well as written permission from the physician for over-the-counter medications given in school.

*See Also:
Part 4,
Exhibit 17*

Except as provided for above, it is not permissible to furnish medication, including aspirin, to students except as first aid in emergency situations. The full Emergency First Aid Guidelines for California Schools – 2013 Edition is located at:
<https://www.caloes.ca.gov/PlanningPreparednessSite/Documents/Emergency%20First%20Aid%20Guidelines%20for%20CA%20Schools%20EMSA%202013.pdf>

✓

Minimum Documentation for Audit

- ◆ Purchase order (for approved items only)
- ◆ Invoice

PCC §20111
PCC §20651

Reference

FUEL

RTC §60039

Authority

Motor vehicle fuel is subject to the competitive bidding limit of \$92,600. **Note: this amount is adjusted annually by the State Superintendent of Public Instruction (SSPI) pursuant to PCC section 20111(a).** In addition to sales taxes, other fees and taxes are added to the purchase of motor vehicle fuel. School districts are required to pay* the following taxes, which are applied to each gallon of fuel purchased:

*See Also:
Part 3,
Taxes, Page
87*

Taxes/FeesCurrent Rates

Sales and District Taxes

7.50% plus applicable district taxes

State Fuel Excise Tax* (motor vehicle fuel)

\$0.36 per gallon

State Fuel Excise tax* (diesel fuel)

\$0.13 per gallon

Federal Excise Tax

Exempt

*School districts currently receive a reduced rate for the excise tax for any diesel fuel that is used in the operations of home-to-school and student activity transportation. The school district must acquire an Exempt Bus Operations permit from the State Board of Equalization. There are also specific requirements for record keeping and fuel inventories. For more information, contact the Board of Equalization, Fuel Tax Division, (800) 400-7115.

**Minimum Documentation for Audit**

- ◆ Board excerpt showing award of bid, if purchase exceeds \$92,600 (see above)
- ◆ Purchase order or purchase agreement
- ◆ Invoice (with appropriate taxes applied)

PCC §20111

PCC §20651

GENERAL SUPPLIES & MATERIALS**Authority**

Contracts involving an expenditure of \$92,600 or more must be let to the lowest responsible bidder if they are for the purchase of equipment, materials or supplies to be furnished, sold, or leased to the district.

The bid threshold does not apply solely to a single purchase, but also to what the aggregate cost is expected to be during the contract; commonly, per fiscal year for one-time purchases or multiple years for recurring purchases. Paper purchases are an example: The district may make several separate paper purchases during the course of a fiscal year which total in excess of \$92,600. In this example competitive bidding should be completed.

EC §38110

Cooperative Purchase Agreements may be used by districts, to avoid the bidding process, provided that all aspects of the cooperative bidding and purchasing process are adhered to.

The Standard School Supply List bid awards also fulfill the Education Code requirement for the County Office of Education to provide a procedure for procurement of standard school supply items for elementary districts having an average daily attendance of less than 2,500.

Note: Persons (including individuals and corporations) engaged in the business of garment manufacturing must obtain a garment registration certificate from the Labor Commissioner. Districts should ensure that vendors have the required certificate when purchasing clothing,

Reference

hats, gloves, etc. The Division of Labor Standards Enforcement maintains a database which may be accessed at: <https://www.dir.ca.gov/databases/dlseir/garmreg.html>

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Minimum Documentation for Audit

EC §17540 et
seq.

- ◆ Purchase order with referenced bid numbers, as applicable
- ◆ Excerpt of approved governing board item awarding the bid
- ◆ Invoice

SURPLUS PERSONAL PROPERTY**Authority**

EC §17602
EC §81653

“The governing board of any school district may sell or lease used personal property belonging to the district to the federal government or its agencies, to the state, to any county, city and county, city or special district, or to any other school district, and the governing board of another school district may purchase or lease the property. The selling price and the terms of sale, or the lease price and the terms of lease shall be fixed by the governing boards of the school districts effecting the sale or lease, and approved by the county superintendent of schools. The sale or lease may be made without advertisement for or receipt of bids, or compliance with any other provisions of this code.”

EC §42303

Governing boards of school districts may also purchase surplus property from the federal government or any agency thereof in any amount needed for the operation of the schools of the district without competitive bidding.

BUS SALES

A school district that receives funding for the replacement of a school bus may sell that school bus to another school district in this state if all of the following conditions are satisfied:

EC §42303

- ✓ The purchasing school district is replacing a school bus that is in service at the time of the sale and has not been designated a temporary school bus pursuant to subdivision (a) of Section 42291.5.
- ✓ The school bus being replaced by the purchasing school district is older than the school bus that is the subject of the sale.
- ✓ The school bus being replaced is not sold to another school district.
- ✓ The purchasing school district by a resolution from its governing board, holds the state and selling school district harmless for any liability that may result from the school bus that is the subject of the sale.
- ✓ The proceeds from the sale of a school bus shall be used by the selling district for home-to-school transportation purposes.
- ✓ After the districts agree to the sale, but prior to the sale being finalized, the school bus being sold must be in compliance with all relevant provisions of the Vehicle Code and Title 13 of the California Code of Regulations.

Reference



Minimum Documentation for Audit

- ◆ Approved governing board agenda items from both selling and purchasing districts which specifies selling/leasing price and terms of the sale/lease
- ◆ Written approval from County Superintendent of Schools
- ◆ For buses purchased under the authority of ECS 42303, a purchase agreement which contains the specified conditions of the sale
- ◆ Invoice

PCC §20111
PCC §20651

UTILITIES

Authority

Due to the sole source nature of most utilities, including water/sewer, electricity, and local telephone service, competitive bidding does not apply. Where competition exists, however, such as with telecommunications services (long distance phone service and cellular phones), and bottled water service, competitive bidding may be required.

BOTTLED WATER SERVICE

This service is subject to the competitive bid limit of \$92,600.

E-RATE



E-Rate is a federal program of the Federal Communications Commission (FCC) administered by the Schools and Libraries Division of the Universal Service Administrative Company that provides eligible K-12 public schools and libraries 20% to 90% discounts on approved telecommunications, Internet access, and internal connections costs.

IRC 26 U.S.C.
Section 4253
(b) (1)

E-Rate discounts are based on the number of students eligible for the National Free Lunch Program. Schools and libraries in low-income urban communities and rural areas qualify for higher discounts. Although the E-Rate application process can be difficult and schools must make strategic decisions about the level of discounts for which they will apply, every school should consider applying for E-Rate discounts.

Open and competitive bidding is a critical part of the E-Rate program. Federal requirements, as well as California competitive bidding law, apply to E-Rate equipment and services. Bid specifications must be posted on the FCC web site for 28 days before awarding and signing contracts. The standard payment procedure is that the vendor bills the federal government for the approved E-Rate discount portion and the remainder is paid by the local educational agency.

Local educational agencies should make every effort possible to ensure that the E-Rate Program requirements are followed and funds are being spent appropriately. In addition, they should retain records and be prepared for extensive audits of the E-Rate program by the FCC. Additional information about the E-Rate program is available from the following web sites: Universal Service Administrative Company (USAC), Schools and Libraries Division <http://www.usac.org/sl/default.aspx> and California Department of Education at www.cde.ca.gov/ls/et/ft/eratemain.asp

*See Also:
Part 3,
Taxes, Excise
Page 87*

Reference

TAXES (FEDERAL EXCISE)

School and community college districts are exempt from the 3% excise tax that is imposed on all communication services, including local telephone service. Telephone bills should be audited to determine if the excise tax is being assessed. If so, the company representative should be contacted to correct the billing and to begin the process for a refund.

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Minimum Documentation for Audit

- ◆ Purchase order or service agreement
- ◆ If bid limits are exceeded, excerpt from governing board minutes approving bid award
- ◆ If using E-Rate funding, certification statement that expenditure is in compliance with program regulations, including posting/bidding requirements
- ◆ Invoice

Reference	
	<p><u>OTHER EXPENDITURES TYPES</u></p> <p>ADVANCE PAYMENTS</p> <p>Authority</p> <p>Payments customarily are not paid in advance except for certain utilities, postage stamps, admission tickets, permits and services provided by other governmental agencies, subscriptions to, or purchases or rentals of newspapers, magazines, periodicals, books, films, payment on leases of real property and for the maintenance of equipment when such action will result in a decrease in the cost to the district or which cannot be secured without payment in advance.</p> <p>EC §35161</p> <p><i>See Also: Part 1, Contracts, Page 14</i></p> <p>✓ <u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Fully executed copy of authorizing document, if applicable, (e.g., lease or maintenance agreement with payment provisions) ◆ Invoice <p>AWARDS</p> <p>Community Member Recognition (Non-Employees)</p> <p>School districts and community college districts may purchase commemorative awards and gifts in recognition of service to the district by non-employees, organizations, and firms when the purpose of such awards is to promote services to the school district and the cost of such awards is reasonable. It is recommended that districts adopt policy and regulations for ensuring control of expenditures for awards, which provide limits on the amounts to be expended, the purpose of such expenditures, and the officials who may approve the expenditures. For example, awards will serve a public purpose by encouraging other private individuals, organizations, or firms to similarly undertake to assist the district. The awards must be of negligible intrinsic value (i.e., their value to the recipient be limited to their token value as an expression of district appreciation for significant contributions or assistance to the district.</p> <p>EC §35160 EC §70902</p> <p>Awards - Employees/Pupils</p> <p>The governing board of a school district may make awards to pupils for excellence. The governing board of a school district may make awards to employees who do any of the following:</p> <ul style="list-style-type: none"> ➤ Propose procedures or ideas which thereafter are adopted and effectuated, and that result in eliminating or reducing district expenditures or improving operations ➤ Perform special acts or special services in the public interest ➤ By their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in operations of the school district <p>The governing board of a school district may make awards to pupils as follows:</p> <ul style="list-style-type: none"> ➤ The governing board of a school district may make awards to pupils for excellence <p>EC §44015 EC §70902</p>

Reference



Before any such awards are made pursuant to this section, the governing board shall adopt **rules and regulations**.^{*} The board may appoint one or more merit award committees made up of district officers, district employees or private citizens to consider employee proposals, special acts, special services or superior accomplishments and to act affirmatively or negatively thereon or to provide appropriate recommendations thereon to the board.

Any award granted to an employee that may be made by an awards committee under adopted district rules **shall not exceed \$200**, unless a larger award is expressly approved by the governing board.

EC §44015

When a district awards program is established, the governing board shall budget funds for this purpose but may authorize awards from funds under its control whether or not budgeted funds have been provided or the funds budgeted are exhausted.

EC §35161
EC §70902

This code section applies to students as well as employees. There is no express authority to delegate pupil awards to a committee under section 44015; however, Education Code §35161 authorizes the governing board to delegate to an officer or employee of the district this power or responsibility.

Community college districts, pursuant to Education Code Section 70902, may purchase similar awards for their employees and students.

GIFT CARDS

The issuance of gift cards as awards is not recommended due to the recipient's ability to convert the value in full, or in part, to cash, and the district's inability to monitor what is purchased. To avoid a gift of public funds, gift cards should only be considered if the amount is minimal, the purchase can be confined to only those items that are a legal expenditure of public funds, and cannot be converted to cash.

REWARDS – VANDALISM, THEIVES

GC §53069.5

Districts may offer and pay a reward, the amount to be determined by the governing board, for information leading to the determination of the identity of, and the apprehension of, any person whose willful misconduct results in injury or death to any person or who willfully damages or destroys any property.

EC §48904

The parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed \$10,000, adjusted annually for inflation. The annual adjustment is issued by the superintendent of public instruction in December of each year. As of 2019, the amount is \$20,300.

See: <https://www.cde.ca.gov/fg/ac/co/parentliability2019.asp>

^{*}Governing board adoption is required. An administrative regulation would suffice if presented to the board for adoption. A board may also adopt a resolution outlining the awards rules and regulations which may then be incorporated into your administrative regulation.

Reference	
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ➤ Copy of approved board policy ➤ For employee awards exceeding \$200, excerpt from board minutes giving specific approval for the higher award ➤ Invoice <p>CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)</p> <p>Authority</p> <p>PCC §10290 et seq. PCC §10298 PCC §10299 PCC §12101.5</p> <p>The California Multiple Award Schedule (CMAS) program was established in 1993 (Assembly Bill 1727). The program was further enhanced by the passage of additional legislation in 1995 (Senate Bill 910) and 2000 (Assembly Bills 2866 and 1684).</p> <p>The program enables California state agencies and local governments, under delegation from the State of California, Department of General Services (DGS), to contract with suppliers awarded contracts by DGS for the acquisition of information technology, goods and services without conducting their own competitive bidding process. The term “goods” refers to all types of tangible personal property, including materials, supplies and equipment.</p> <p>CMAS contracts may be used for the purposes of E-Rate funding only if the DGS vendor is the most qualified bid. The school district must comply with California competitive bidding requirements and post the requested services or equipment on the Schools and Libraries Division national web site. After the 28-day bidding period closes, the district may issue a purchase order to the CMAS vendor if it is the lowest responsive bidder.</p> <p>CMAS contracts may be used for the purposes of E-Rate funding only if the DGS vendor is the most qualified bid. The school district must comply with California competitive bidding requirements and post the requested services or equipment on the schools on the Schools and Libraries Division national website. After the 28-day bidding period closes, the district may issue a purchase order to the CMAS vendor if it is the lowest responsive bidder.</p> <p>CMAS allows for a public works component if the labor is incidental to the overall cost of materials. Generally, incidental has been deemed to be 10% of the cost of materials; however, the determination may be made on a case-by-case basis by obtaining a legal opinion of counsel, but may never exceed 49.9% of the cost of materials.</p> <p>Districts should consider the following key points regarding the use of the CMAS program: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/CMAS-Program-Overview</p> <ul style="list-style-type: none"> ➤ Local government agencies are not bound by the requirement to obtain three offers but should set their own policy of how many contractors to solicit. Districts choosing to purchase from DGS contracts should ensure that their purchasing procedures are written to allow purchases from DGS contracts prior to their utilization.

Reference

- The agency must develop a request for order (RFO) identifying their needs and requirements for the purchase. The RFO could be simple for a product, or more detailed and contain a statement of work (SOW) for a services project. For information regarding the preparation of a SOW and some SOW samples, go to the following website: www.pd.dgs.ca.gov/cmas then select the Local Governments link.
- Specifications contained in the DGS contracts should be carefully reviewed to ensure that the items purchased meet the district's needs.

CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (CUPCCAA)

PCC §22000 et seq.

Authority

Pursuant to Public Contract Code §22000, et seq., by adopting construction cost accounting standards promulgated by the California Uniform Construction Cost Accounting Commission, local agencies, including school districts, may award contracts for public projects work without engaging in a formal bidding process. Projects valued at \$45,000 or less may be performed by force account, negotiated contract, or purchase order. Projects valued up to \$175,000 may be performed under contracts awarded by the "informal" bid process.

The district must adopt the commission's cost accounting standards and establish informal bidding procedures by resolution before the district can engage in the informal bidding process for projects falling within the purview of the act. The essential steps the district must take to participate in the informal bidding process are:

- The governing board elects, by resolution, to become subject to the commission's cost accounting standards.
- The district notifies the State Controller's Office of its election to become subject to the commission's cost accounting standards.
- The governing board adopts, by resolution, procedures to implement the informal bidding process.
- Effective Jan. 1, 2016, State Bill 184 changed the requirements to maintain a list of contractors as follows:

PCC §22034

Notice to contractors shall be provided in accordance with either paragraph (1) or (2), or both.

1. The public agency shall maintain a list of qualified contractors, identified according to categories of work. All contractors on the list for the category of work being bid shall be mailed, faxed, or emailed a notice inviting informal bids unless the product or service is proprietary. All mailing of notices to contractors pursuant to this subdivision shall be completed not less than 10 calendar days before bids are due.
2. The public agency may elect to mail, fax, or email a notice inviting informal bids to all construction trade journals specified in Section 22036.

Upon Establishing the method of notification, the district may proceed to utilize the informal bidding procedures. The act requires the district to give notice when a project is to be awarded through informal bidding.

Reference

PCC §22030 et seq.	<p>The district must review the notice to confirm inclusion of the minimum substantive content prescribed by the act. These requirements are:</p> <ol style="list-style-type: none"> 1. General description of the project 2. How additional information (e.g., plans, specifications, etc.) regarding the project can be obtained 3. The time and place for submission of bids. The notice must be delivered by mail and the mail and the mailing must be completed at least 10 days prior to the due date for bids.
PCC §22034 EC 17604, 17605	<p>The act also allows for delegation of authority to award informal contracts to “the public works director, general manager, purchasing agent, or other appropriate person” authorized by the governing board. Ratification of the award must be made within 60 days of execution of the agreement.</p> <p>The cost accounting procedures are required only when districts choose to perform public projects with their own employees.</p> <p>The complete Cost Accounting Policies and Procedures Manual of the California Uniform Public Construction Cost Accounting Commission May be obtained from the State Controller’s Office at: http://www.sco.ca.gov/ard_cuccac.html</p>
<i>See Also: Part 4, Exhibit 9</i>	<p>Districts opting in to CUPCCAA need to submit a copy of the resolution and informal bidding policies to SBAS.</p>
✓	<p><u>Minimum Documentation For Audit</u></p> <ul style="list-style-type: none"> ♦ New CUPCCAA Districts: copy of resolution opting into the act, copy of resolution delegating authority, copy of resolution allowing declaration of emergencies. ♦ Up to \$45,000: Copy of the fully executed contract or purchase order. ♦ \$45,001 - \$175,000: Executed agreement, bid form, and board award/ratification date. ♦ >\$175,000: Executed agreement, bid form, and board award/ratification date. ♦ Invoice <p><u>CHARTER SCHOOLS</u></p> <p>Authority</p>
EC §47601 EC §47610	<p>It was the intent of the state legislature in developing charter schools “to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure.” In Section 47610 of the Education Code, the legislature made charter schools exempt from most laws governing school districts. This section provides that “[a] charter school shall comply with all of the provisions set forth in its charter petition, but is otherwise exempt from laws governing school districts except as specified in Sections 47611 and 41365.”</p>
PCC §20110	<p>Public Contract Code §20110 requires competitive bidding only “to contracts awarded by school districts.” Although a charter school is a separate entity separate</p>

Reference

from the school district and exempt from the requirements of the Public Contract Code, when selecting a contractor any substantial deviation from generally accepted standards of fiscal management could form the basis of a revocation of the school's charter. The sponsoring school district is responsible for ensuring the charter school has complied with all of the provisions set forth in its charter petition. A charter school still may be required to use competitive bidding by charter provision and local district policy. Charter school bidding and contracting procedures should be developed by the district for inclusion in an existing charter petition when it is revised or renewed as prudent business practice.

At district option, the Accounts Payable (Commercial) Warrant Audit desk will no longer require districts to provide documentation, such as evidence of compliance with competitive bidding, for warrants which are payments by charter schools. If the district business manager certifies a warrant is an authorized charter school payment, it will not be subject to the regular audit process. Direct funded charter schools will not require a certification.

✓

Minimum Documentation for Audit

- ◆ For locally funded charter schools, a signed certification that warrant is for a charter school payment.
- ◆ For funding warrants payable to the charter school, the district should provide a worksheet showing the calculations, signed by the district's chief business official.

COOPERATIVE PURCHASING (formerly "Piggybacking")

PCC §§20118,
20652, 20653;
GC §14931

Authority

Public Contract Code provides authority for the governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, to authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. This practice is commonly called "piggybacking." A school district may make purchases on contracts awarded by another district only if the school district's needs are included in the original competitive bidding process. **Note: There is no authority in PCC 20118 allowing for "piggybacking" on service contracts.**

PCC §20118

Attorney General Opinion No. 05-405 concluded that the use of piggyback contracts to purchase modular buildings placed on permanent foundations violates state requirements for competitive bidding of public works projects. Modular classrooms are multiple, pre-manufactured building components, such as separate wall and floor systems, that are transported to a site where all components are assembled on a foundation to form a complete building or groups of buildings.

Legislation (AB 1967) was enacted in 2006 which added language to Public Contract Code §20118 giving school districts the authority to contract directly with vendors when purchasing through piggyback contracts.

Reference

Santa Barbara County school districts may purchase from other public agency contracts without going to bid if the following audit standards are met:

- **Original Contract Terms:** The awarding district's written contract documents include language to permit other school districts to participate in the purchase of specified personal property on a per unit basis. The term and the limit on the total number of items authorized to be purchased under the contract may not be exceeded. Sample authorizing language is as follows:

"Other Agencies: Other public school and community college districts located in [Counties] may purchase identical items at the same prices and upon the same terms and conditions pursuant to Sections 20118 and 20652 of the Public Contract Code. The District waives its right to require other districts to draw their warrants in favor of this District as provided in said code sections."

- **Governing Board Excerpt:** The awarding district agrees to the purchase by action of its governing board and verifies the contract is valid and let in compliance with all legal requirements. A written excerpt of governing board action from the awarding school district should be obtained for audit records
- **Governing Board Action:** The school district governing board determines that it is in the best interest of the school district to purchase specific item(s) through another district and authorizes the purchase through use of the awarding district's contract. The governing board approval date should be written on the purchase order.

Sample Motion:

"It is recommended that purchase of [items] be awarded to [vendor's name] in the amount of \$ _____ under the terms and conditions of Contract Number _____ awarded by [agency] pursuant to the provisions of Public Contract Code Section 20118 (20652 for community college districts). The governing board finds and determines that it is in the best interest of the district to purchase [items] through [agency]."

- **Separate Contract:** The district must enter into a separate contract with the vendor under the same terms and conditions, including pricing, as the awarding district's contract. The original contract/bid number should be referenced.
- **Invoice**

Note: If personal property is acquired through the use of cooperative purchasing, but it is being installed as a permanent fixture (i.e., playground equipment), the installation must be bid as a public works project and a payment bond must be obtained if the total expenditure (equipment and labor) is over \$25,000.

✓

Minimum Documentation for Audit

- ◆ Copy of contract between vendor and awarding agency (with piggyback clause)
- ◆ Advertisement

Reference

- ◆ Bid form
- ◆ Addenda
- ◆ Board approval of awarding agency
- ◆ Board approval of awarding agency
- ◆ Board approval of awarding agency renewals
- ◆ District's resolution approving use of the bid
- ◆ District's board action authorizing membership (if applicable)

CREDIT CARDS AND PROCUREMENT CARDS

EC §35160
EC §70902

Authority

Under the permissive authority of the Education Code, school and community college districts may obtain credit cards in the name of the district for use by authorized district employees and officers. Individuals are to charge only those items which are legal expenditures (i.e., serving a public education purpose) and reimbursable from district funds.

Governing board approval is required before a credit card account is opened. A governing board policy and administrative regulations should be established to address the following issues:

- Board Approval and Policy
 - Identify, by title, person responsible for overall program/expenditures
 - Identify who is authorized to receive cards
 - Purpose(s) for which the cards may be used
 - Requirement to develop administrative regulations governing their use
- Administrative Regulations
 - Define approved uses
 - Define prohibited uses
 - Cash advances
 - Consultants/personal services
 - Personal purposes (distinguish from personal credit cards)
 - Capital outlay
 - Toxic art supplies, non-approved first aid supplies, etc.
 - Alcohol
 - Define credit Limits
 - Reconciliation of monthly transactions
 - Review by supervisor/department head/fiscal services
 - Handling exceptions
 - Record retention
 - Card security (procedure for lost, stolen, compromised cards)
 - Card revocation
 - Define process to ensure use taxes are recorded and paid from credit card transactions

Reference

- Define process to ensure overall district bid limits are not exceeded for supplies and materials
- Define how returns and credits are handled
- Define how credit card charges for travel-related expenses are reviewed and coordinated with the travel approval and claim process to prevent duplicate payments
- Define process for receiving materials and supplies ordered via credit cards (e.g., received at district warehouse or school site, not delivered to personal residence)
- Cardholder agreements

EC §35160
EC §70902

It is strongly recommended that districts have their independent auditor review the credit card program before it is implemented.

CA Const.
Article 16

Districts should ensure that strong internal controls are in place and be prepared for expenditure information requests under the Public Records Act.

Payments should be made in a timely fashion to avoid finance charges which are in violation of the California Constitution, Article 16.

✓

Minimum Documentation for Audit

- ◆ Excerpt from governing board minutes approving the credit card account, including credit limit (new account)
- ◆ Copy of governing board policy and administrative regulations governing the use of credit cards (new account or upon request)
- ◆ Itemized credit card/procurement card invoice that contains an adequate description and purpose of the purchase. The general “supplies” is insufficient. The individual identified as being responsible for the account must review the invoice and supporting documentation, and certify that all expenditures were reviewed for compliance with board policy and administrative regulations. All supporting receipts are kept on file at the district office.

NOTE: The county office may conduct additional audits reviewing the supporting documentation/receipts for specific purchases. In order to prevent the possible delay in approving the payment, it is imperative that all supporting documentation listed above be readily available.

LATE FEES, FINANCE CHARGES, INSTALLMENT SALES, INTEREST

CA Const.
Article 16,
Section 18

Authority

The California Constitution states in part that “no county, city...board of education or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for each year, without the assent of 2/3 of the qualified electors thereof...”

County Counsel opinions conclude that installment purchases (which include finance charges) violate the California Constitution because “an immediate and present indebtedness or liability is created which is to be paid in or part out of future years’ funds.” Therefore, such agreements are void. The same restriction applies to interest on a carried-over balance (e.g., credit cards).

Reference

EC §17450

Leases and lease-purchase are permissible and are specifically authorized under Education Code §17450. The rationale for this is that they:

1. Create no immediate indebtedness for the aggregate (total) installments
2. Confine the liability to each installment as it falls due
3. Each payment is for the consideration actually furnished during that period.

Similarly, certificates of participation do not violate the constitution because they provide long-term financing through a lease with an option to purchase.

While districts are discouraged from doing so, they may pay a late fee on an overdue payment if this provision is part of the purchase agreement and the terms are stated on the invoice (e.g., payment due within 30 days or a 1.5% late fee will be assessed).

✓

Minimum Documentation for Audit

- ◆ Installment sale agreements will be disallowed
- ◆ Districts should ensure that payments are made in a timely fashion to avoid any late fees. If late fees are assessed, the invoice should state the terms.
- ◆ Invoice

MEMBERSHIP / DUES**Authority**

There is no specific authority to use district funds for pay memberships/dues of individuals in organizations.

EC §35172

The governing board of any school district may subscribe for membership for any school under its jurisdiction in any society, association, or organization which has for its purpose the promotion and advancement of public or private education.

To pay for memberships/dues in the names of individuals, the governing board must either:

- Include the items specifically in the individual's contract (e.g., superintendent's contract) or
- Take specific action and have board policy that states the payment of dues is part of fringe benefit program for the "entire" group of employees, e.g., assistant superintendents, management, etc.

✓

Minimum Documentation for Audit

- ◆ Board approval date for institutional/individual membership
- ◆ Contract or board excerpt/policy if dues paid in the name of an individual
- ◆ Invoice

Reference

PAYROLL RELATED PAYMENTS

Authority

Employees are required to be paid via the district’s payroll system so that all mandatory payroll taxes are paid on their earnings. There are a few exceptions to this rule; they are:

See Also:
Part 1,
IRS Form
1099-MISC
Reporting,
Page 19

Deceased Employee

Wages (including any retroactive pay) paid in the calendar year following the employee’s death are paid on an accounts payable (commercial) warrant as they are not subject to Social Security and Medicare taxes. Use form 1099-MISC. Include the name and recipient’s identification number (TIN or SSN) of the estate or beneficiary and report the amount of earnings in Box 3.

Contact the Retirement department for assistance in reporting the wages to the respective retirement system.

Errors/ACH

See Also:
Part 3
Revolving
Cash Funds,
Page 112

Problems may arise with employees who have designated that their wages be electronically deposited via Automated Clearinghouse (ACH) into a specific financial institution wherein the transaction is rejected and the amount is returned to the district. (This usually occurs when the employee has closed or changed their account and forgot to inform their Payroll department.) Because the transaction was already posted to the payroll system for W-2 reporting and the funds were returned to the district, the employee will be paid via an accounts payable (commercial warrant) or a revolving cash fund check. **Note: Only partial ACH returns are cleared through the accounts payable method.**

Errors/Non-ACH

EC §45167
EC §42800

When an error is made in the calculation or reporting in the payment of a classified employee’s salary, the employee is entitled to a statement of the correction and a supplemental payment within 5 workdays following the determination. Such payment may be made via an accounts payable (commercial) warrant or a revolving cash fund check. This should be closely coordinated with the district’s Payroll department to ensure that the proper postings are made for W-2 reporting purposes.

Military Pay (Supplemental)

The difference between an employee’s regular pay and the pay provided by the state or federal government for military service is known as supplemental pay.

If the supplemental military pay is provided while the employee is on ACTIVE service with the U.S. Armed Forces or on an INDEFINITE ASSIGNMENT with the state National Guard, the employment relationship is broken and the compensation is not subject to federal income tax withholding, Social Security, or Medicare. The payments are made via an accounts payable (commercial) warrant and are reported on FORM 1099-MISC if they are \$600 or more in a calendar year.

Reference

NOTE: If the district continues to allow an employee called to active duty to participate in the district's benefit plans, the IRS may consider the employment relationship to be intact, making the supplemental pay taxable wages.

EC RTC 19521

If uncertain, it is recommended that the district seek advice from its legal counsel.

Interest-Late Salary Payments for K-12 Certificated Employees

Effective Jan. 1, 2000, certificated K-12 employees are entitled to an interest payment for late payments of monthly salary, additional assignments, and salary increases when the employee has filed proper documentation in a timely manner. A daily compound interest payment must be paid for each day that the salary payment is late. Compound interest is payable for each calendar day that the payment is delayed beyond the established pay date. The interest period starts from the last legal payment date (generally the regular or supplemental pay date) and continues until the salary is actually paid.

IRC 6621
§45048-9

The interest rate is based on section 19521 of the Revenue & Taxation Code and section 6621 of the Internal Revenue Code.

The interest rate is not considered salary and should be made through an accounts payable (commercial) warrant or a revolving cash fund check. Any interest totaling more than \$600 for an individual during a calendar year is reportable to the IRS on Form 1099-INT. Interest payments are not reportable on FORM W-2.

*See Also:
Part 2,
Voided for
Age, Issuance
of a New
Warrant,
Page 32*

Overage Payroll Warrants

Warrants, including payroll warrants, are voided by the county auditor after a period of 6 months. The county auditor automatically voids warrants, credits the district for the amount of the voided warrants, and notifies the County Office of Education which, in turn, notifies the school district. Because the payroll information was already recorded in the payroll system for reporting to the various taxing agencies, replacement warrants must be issued as an accounts payable (commercial) warrant. To replace an overage payroll warrant, the district should contact Payroll to obtain the necessary documentation materials.

IRC, Subtitle
A, Chapter 1,
Subchapter B,
Part II, §74**Performance Awards**

Occasionally, school districts receive funding from the state to pay certain employees an award or bonus based upon performance. (Examples may include, Governor's Performance Awards, Site/Staff Performance Awards, and Certificated Staff Performance Bonuses or similar.) These types of payments must be processed through payroll.

CA
Unemployment
Insurance
Code, §926 &
§13009

In general, cash and non-cash awards given to employees for outstanding job performance and/or any bonuses paid to employees in addition to their usual salary are considered wages subject to federal and state tax withholding, Social Security and Medicare as applicable to the employee, unemployment, and workers' compensation.

Reference

See Also:
Part 3,
Consultants,
Page 42

See Also:
Part 3,
Settlement
Payments
(Legal),
Page 83

✓

IRC 104(a)

Referees/Umpires/Officials

Referees and umpires hired by a school district or the Associated Student Body to referee or umpire California Interscholastic Federation sporting events are considered to be independent contractors.

This does not apply to coaches. The Internal Revenue Service has determined that coaches are deemed to be employees and, therefore, should be paid through the district's payroll system.

Note: Regardless if payment is made by the district or the Associated Student Body, the contracts should be coordinated with the district office so that appropriate reporting is made to the Employment Development Department (FORM DE 542) and the Internal Revenue Service for total payments exceeding \$600.

Retirement Annuities

Districts often purchase retirement annuities for high-level management staff (e.g., superintendent, cabinet members). Such benefit should be contained in the individual employment agreements and be specific as to the period and amount of contributions. The governing board must approve any such benefit.

Minimum Documentation for Audit

- ◆ District documentation requesting payment that shows how calculation was made (e.g., request from Payroll department to finance/Accounts Payable.)
- ◆ ACH returns: a copy of the bank notice rejecting the transaction and a copy of the auditor's transfer showing the funds were returned to the district.
- ◆ Overage Warrant Replacement: a copy of the fully executed Petition to Replace Warrant Voided for Age.
- ◆ Referees/umpires: a copy of the independent contractor agreement and invoice.
- ◆ Retirement annuities: a copy of the employment agreement, an excerpt from the governing board minutes approving the benefit, and a copy of the invoice from the annuity vendor.

SETTLEMENT PAYMENTS (LEGAL) - EMPLOYEES**Authority****Employees – Back Pay Awards and Salary Settlements**

Under the Internal Revenue Service Code, an employer is obligated to withhold federal and state income taxes and Social Security taxes on payments of "wages." Damages or settlement payments received in employment related actions which represent back or future pay constitute "wages" for purposes of the employment and income tax withholding requirements. These amounts must be reported on FORM W-2 and employers must withhold taxes and Social Security contributions.

Reference

In 1996 Congress passed Public Law 104-188 known as the Small Business Job Partnership Act which amended Internal Revenue Code Section 104(a). As amended, this section provided an exclusion from income tax liability only for compensatory damages which are received on account of personal physical injuries or physical sickness. Emotional distress will not be considered a physical injury or physical sickness even if physical symptoms result from such emotional distress. The act provides that punitive damages will not be excludable from an individual's gross income whether or not the punitive damages are related to a claim for personal injury or sickness.

Districts are urged to use extreme caution in entering into settlement agreements attempt to circumvent the provisions of the Internal Revenue Code. Legal counsel should be consulted to determine the proper structuring of the settlement agreement. Districts should not agree to indemnify a plaintiff for any taxes, interest or penalties. Later determined to be due, since such indemnification provisions do not bind federal or state taxing authorities.

GC §53260 et seq.

Employment Contracts – Termination

School and community college district governing boards must include a specific provision about the maximum cash settlement upon termination in any contract of employment originally approved or extended by the governing board after Sept. 28, 1992. A formula is established which caps cash settlement at an amount equal to salary for the number of months remaining in an employee's contract with a maximum of 18 months. The continuation of health benefits also is subject to specific time limitation.

IRS Revenue Ruling 2004-110
(Supersedes IRS Revenue Ruling 58-301)

An amount paid to an employee as consideration for cancelation of an employment contract and relinquishment of contract rights IS ordinary income, and wages, for purposes of Federal Insurance Contributions Act (FICA), Federal Unemployment Tax ACT (FUTA), and Federal income tax withholding. Prior to this ruling (which became effective in January 2005), severance payments made to an employee in consideration for early termination of an employment contract were not considered wages or compensation, but ordinary income and not subject to FICA, FUTA, or income tax withholding.

CDE Legal Advisory
Dated March 17, 1999

SETTLEMENT PAYMENTS (LEGAL) – SPECIAL EDUCATION**Authority**

EC §35160

Special Education

34 CFR,
Section
300.506(b)(5)

Situations arise in which parents unilaterally determine to place their child in a private school, or to contract with a private agency (e.g., psychologist, physical therapist, etc.) in order to receive an appropriate special education placement. The parents often pay for the services themselves and request the school district to reimburse them for tuition or related services costs.

If reimbursement request is disputed, the parents and the school district settle such disputes either through mediation or due process hearing. Agreements reached between the parents and the school district must be set forth in writing.

The authority to negotiate a special education settlement may be delegated by the governing board to the special education director or other district official; however, approval of the payment amount is subject to specific governing board approval. The

Reference

approval should not merely be listed as a purchase order (PO) number on the list of POs for approval. The action may be placed on the consent agenda indicating:

“approval of district payment to parent in the amount of \$_____ for settlement of special education case number _____.”

(Note: If the settlement was made via a due process hearing, a case number is assigned, beginning with the letters “SN.” IF settled via a mediation agreement, the district may assign a number for confidentiality purposes.)

✓

Minimum Documentation for Audit

- ◆ Fully executed copy of settlement agreement, signed by all parties.
- ◆ Board approval certification, including date of governing board approval.
- ◆ Special education reimbursements: copies of provider invoices and proof of payments by parents(s).

Note: Payments subject to payroll taxes (e.g., those which constitute “wages”) must be made through the payroll system. Districts are encouraged to contact the Accounts Payable (Commercial) Warrant Audit and Retirement Reporting departments before employment-related settlement agreements are finalized to ensure they meet IRS and retirement reporting (PERS, CalSTRS) regulations.

PCC §3400

LIMITING SPECIFICATIONS TO A SPECIFIC BRAND OR TRADE NAME (aka “SOLE SOURCE” – “OR EQUAL”)**Authority**

With limited exception, public agencies are prohibited from calling for a designated material, product, thing, or service by specific brand or trade name. As of 2004, only one, not two, brand name or trade name of comparable quality or utility must be specified and followed by the words “or equal.” Additionally, if the public agency is aware of an equal product manufactured in California, it must name that product in the specification.

The statutorily recognized exceptions to this section are:

1. In order that a field test or experiment may be made to determine the product’s suitability for future 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:
 - a. Declared by a local agency, but only if the declaration is approved by four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.
 - b. Declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in public records of the authority issuing the invitation for bid or request for proposals.

If Exception 1 is used to justify the sole source designation, there must be finding by resolution of the district’s governing board authorizing inclusion of a sole source for

Reference

such field test or experimental purposes. The board's finding and resolution in this regard must be included in the specifications for the project.

In the event of a legal challenge in court to a sole source acquisition, a knowledgeable district employee, a knowledgeable employee of the vendor with whom the contract was entered, as well as an independent expert, would likely be called upon to produce evidence. Therefore, it is recommended that the district accumulate written information from their most knowledgeable employees and principal of the vendor confirming in writing for their files that the item being obtained is unique, that there is only one source from which the item can be obtained and describing how the item is unique.

In any event, before contracting on the basis of sole source needs, it is recommended that the district consult with its legal counsel and with an individual or individuals with expertise regarding the product and the sources for purchase of the product at issue to assure that a sound argument can be made for sole source purchase.

✓

Minimum Documentation for Audit

- ◆ Board resolution declaring a sole source exception and stating the reasons therefore
- ◆ If obtained, a copy of legal counsel opinion approving the sole source determination
- ◆ Fully executed contract with appropriate signatures
- ◆ Invoice

IRC §6109

TAXES (Federal Withholding)**Authority****Backup Withholding – Internal Revenue Service (IRS): Taxpayer ID**

Districts are required to withhold at 28% for payments made to vendors subject to reporting on Form 1099-MISC when:

- The vendor/payee is paid at least \$600 in a calendar year and has not provided their Taxpayer Identification Number (TIN); and/or
- The IRS notifies the district to withhold because of an incorrect TIN previously filed.

If a vendor does not provide a TIN, backup withholding should begin with the first payment made by the district and continue until the vendor submits a completed and correct Form W-9. The district has 30 days to stop backup withholding. If the W-9 is received before the 31st day or before backup withholding has begun, the district is not required to institute withholding.

Backup Withholding Foreign Vendors (IRS)

Payments made to a foreign vendor who is considered by the IRS to be a nonresident alien normally require a statutory 30% withholding tax rate. Districts are required to withhold and remit the tax and to report all paid income of a foreign vendor to the IRS and to the vendor. Documentation to reduce the withholding or prove tax exempt

See Also:
Part 1,
IRS Backup
Withholding
Requirements
Page 17

See Also:
Part 1,
IRS Backup
Withholding
Page 18

Reference

RTC, 26
U.S.C., Section
4253(b)(1)

status under a treaty with the United States needs to be provided by the vendor. Most commonly on FORM W-8BEN (Beneficial Owner), Form W-8IMY (Intermediary), Form W-8ECI (Effectively Connected Income) or Form 8233.

Excise Taxes (Federal)

School Districts are exempt from paying federal excise taxes on all school purchases. This includes fuel, tires, and communications services including local telephone and cellular phone service.

Federal excise tax exemption certificates should be filed with the vendor at the time of purchase. Follow-up, including review of invoices, is necessary to assure that the excise tax is not being applied to district purchases. Districts should seek refunds for excise taxes that were inadvertently paid.

See Also:
Part 1,
FTB Non-
Resident
Withholding
Requirement,
Page 18

For additional information, refer to Publication 510, "Excise Taxes" at the IRS website: www.irs.gov/formspubs/index.html

Franchise Tax Board (FTB) Non-Resident Withholding

California Revenue & Taxation Code and related regulations require districts that make payments of California Source income of more than \$1,500 in a calendar year to non-resident independent contractors performing services to withhold income taxes. If it is known that the vendor will be paid more than \$1,500, withholding should begin with the first payment. The withholding rate is 7% of gross payments.

Districts should report and remit payments using FTB Form 592 on a quarterly basis. There are penalties for failing to withhold or under-withholding.

See Also:
Part 1,
SBE Sales
and Use Tax,
Page 20

Districts may obtain additional information (FTB Publication 1023) and reporting forms from the Franchise Tax Board website at:
<https://www.ftb.ca.gov/forms/search/index.aspx>

Sales & Use Tax (State Board of Equalization)

Purchase of equipment and supplies for use by school districts are taxable and payable to the vendor at the time of purchase, and subject to:

1. California Sales Tax – 7.50% (effective Jan. 1, 2013) statewide rate for purchases from qualified vendors engaged in business throughout California, or
2. California Use Tax – 7.50% (effective Jan. 1, 2013) for purchases from out-of-state vendors.
3. In addition, individual districts may have a different (higher) rates based upon the tax rates of their specific community.

If a purchase is made from a retailer in California and the merchandise is delivered to the buyer in this state, the transaction is subject to sales tax. It is the seller's responsibility to apply the correct sales tax rate and pay the state.

If a purchase is made from an out-of-state retailer, the transaction is subject to California use tax. The primary liability for this tax is the purchaser.

Use tax reports and taxes due are periodically filed with the state board of Equalization by school districts. Accounts Payable staff should consistently record

Reference

the amount of use taxes payable to generate a warrant payable to the State Board of Equalization.

Detailed information is available at the Board Equalization website: www.boe.ca.gov

✓

Minimum Documentation for Audit

- ◆ Backup withholding related to the Taxpayer Identification Number: Copy of “B” Notice from IRS directing the district to withhold.
- ◆ Backup withholding related to Foreign Vendor: Copy of IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- ◆ Use Tax: These payments will not be audited by the Accounts Payable (Commercial) Warrant audit desk; however, the district should ensure that a complete audit trail exists in the event of an audit by the Board of Equalization.

Reference

PUBLIC PROJECTS

PCC
§22002(c)

The term “public project” is defined in the California Public Contract Code for Competitive bidding purposes as any of the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
2. Painting or repainting of any publicly owned, leased, or operated facility.

The \$15,000 competitive bidding threshold limit applies to contracts for public projects, including repair work.

PCC
§22002(d)

“Public Project” does not include maintenance work. Maintenance work includes all routine, recurring and usual work for the preservation or protection of any publicly owned or publicly operated facility, minor repainting, resurfacing of streets and highways at less than one inch, and landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

*See Also:
Part 1,
Bidding
Requirements
Page 4*

The \$92,600 (adjusted annually by the superintendent of public instruction) competitive bidding threshold limit applies to contracts for maintenance.

NOTE: Public Project as defined by Labor Code 1720, is for work subject to prevailing wage rates.

BONDS & SURETYSHIP

As a general matter, bonds involve a tri-party relationship between a principal, surety and an obligee. The surety acts as a “guarantor” promising to answer for the debt or default of the principal. In essence, suretyship is the pledge of a party (the surety) to another party (the obligee) that a third party (the principal) will fully and faithfully perform an underlying contract between the principal and the obligee. In the event of the default of the principal, the surety is bound to the obligee and to thereafter assume the principal’s performance in accordance with the terms of the bond. Typically, there will be a separate agreement between the principal and the surety calling for the principal’s indemnification and hold harmless of the surety in the event that the surety is required to act under the bond on behalf of the principal.

BID BONDS; BID SECURITY

PCC §20111,
20651

By statute, school districts must require bidders to post bid security in connection with submittal of a bid proposal. The Public Contract Code requires that the contract be awarded to the “lowest responsible bidder who shall give such bid security as the board requires.” While these provisions of the Public Contract Code establish the requirement of bid security, the provisions are silent as to the amount of bid security.

In the absence of a specific mandate of the amount of bid security, the district must make a discretionary decision of the amount of bid security. In making this determination, it is important to keep in mind the essential purpose of the bid security. The bid security is intended to protect the public agency from damages incurred if the bidder awarded the contract for the project fails or refuses to execute the contract. In the event, the school district is faced with limited options; award could be made to the next lowest bidder or all bids can be rejected with the project re-bid. While it is virtually impossible, when preparing the bid contracts, to quantify the losses which will be sustained if the apparent low bidder does not execute the contract, by considering the options if the apparent low bidder fails or refuses to execute the contract provides some rough guidelines as to an appropriate amount of the bid security.

PCC §20106,
20651

Reference

	Typically, bid security is provided by bidders in the form of a bid bond. In addition to a bid bond, districts are permitted by statute to accept bid security in the form of cash or cashiers/certified check.
PCC §20111, 20651	Once the contract is awarded, the school district must return the bid security to the unsuccessful bidders within a reasonable time, not to exceed 60 days from the date of the contract award.
	PAYMENT BOND
CC §9550	A public entity, including a school district, must require a contractor on any public work involving an expenditure in excess of \$25,000 to file a payment bond before entering upon the performance of the work. Providers of architectural, engineering, and land surveying services for public works are not required to file a payment bond.
CC §9554	Regardless of the amount of the contract, the bond must be in a sum not less than one hundred percent of the total contractual amount payable. The original contractor may require subcontractors to provide a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by the subcontractors. The purpose of the bond is primarily to insure that payment will be made on laborers' and material suppliers' claims against the contractor and subcontractors for work done or materials furnished in connection with the project. The payment bond must provide that if the original contractor or subcontractor fails to pay any persons furnishing labor or materials, or fails to pay amounts due under the California Unemployment Insurance Code with respect to labor or work performed under the contract, or fails to pay any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to California Unemployment Insurance Code section 13020, the surety will pay such amounts.
CCP §995.311	The school district is required to approve the payment bond. Any bond required on a public works contract must be executed by an admitted surety insurer. The school district must verify that the bond is being executed by an admitted surety insurer. The district may verify the status of the insurer by either: <ul style="list-style-type: none"> ➤ Printing out information from the Department of Insurance website: http://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line\$.startup confirming the surety is an admitted surety insurer and attaching it to the bond, OR ➤ Obtaining a certificate from the County Clerk that confirms the surety is an admitted insurer and attaching it to the bond.
✓	<u>Minimum Documentation for Audit</u> <ul style="list-style-type: none"> ◆ For public projects in excess of \$25,000: Copy of payment bond with confirmation that surety is an admitted surety insurer attached. PERFORMANCE BOND
"Guide to Bidding and Contracting for School	Although there are, no express legal obligation imposed on school districts to require that a successful bidder post a performance bond, as a matter of practice and prudence, performance bonds should be required. A performance bond typically inures to the benefit of the public agency owner. In the event of the contractor's default in its performance of the project or other

Reference

Districts and
Community
College
Districts"

obligations of the contract, the public agency owner can, under the typical performance bond, compel the surety to assume and discharge the contractor's performance obligations.

A good and proficient performance bond issued by a solvent and responsible surety affords the public agency owner with some degree of "insurance" from the potential adverse consequences of a contractor who is unable or unwilling to complete performance.

CHANGE ORDERS**Authority**

PCC §20118.4
PCC §20659

If any change or alteration of a contract governed by the provisions of Education Code §17595 et seq., or Public Contract Code §20650 et seq., is ordered by the governing board of the district, the change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The Board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

PCC §20111
PCC §20652

- The amount specific in Public Contract Code §20111/20652 or 20114/20655 whichever is applicable to the original contract (usually \$15,000); or
- 10% of the original contract price

Where work not included in the original plans is being added to a project and where the resulting change in the contract price is in excess of 10% of the original contract price, such change is subject to competitive bidding requirements unless the change is being made to meet an emergency or competitive bidding would be useless or disadvantageous.

All of the circumstances and facts surrounding the consideration of a project change necessitated by unforeseen problems whether due to site conditions or problems with plans and specifications should be carefully considered and reviewed with legal counsel before determining that changes in excess of 10% should be permitted.

A change order must be signed by an authorized representative of the district, and the contractor, and have governing board approval.

If a change order involves a construction contract, it must be signed by the architect, contractor, Division of State Architect (DSA), and the district. If the change does not involve a structural change, the DSA approval will not be required.

Minimum Documentation for Audit

- ◆ Fully executed change order with required signatures
- ◆ Board approval
- ◆ Invoice (see "Payments" in this section)

CONSTRUCTION MANGEMENT**Authority**

GC §4525, et
seq.

School districts often enter into agreements with construction management (CM) firms to help administer the district's construction projects. These CM firms are typically procured pursuant

Reference

	to the provisions of Government Code §4525, et seq., rather than pursuant to the provisions of the Public Contract Code. These Government Code provisions permit school districts to award such contracts on the “basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” School districts procure the services of CM firms by issuing a Request for Proposals, or similar document.
PCC §20111 & 20651	<p>Once selected, the CM firm serves as the agent of the school district for a particular construction project or several projects. Under this method, the CM facilitates the procurement of contractors to perform each of the various trades required to complete the project pursuant to the provisions of Public Contract Code §20111. All contracts with trade contractors are between the school district and the trade contractors—the CM firm is not typically a party to these contracts. <u>Accordingly, school districts are responsible for the procurement of the trade contractors pursuant to the competitive bidding requirements set forth in the Public Contract Code.</u></p> <p>A district may pay a CM firm in any manner negotiated by agreement. This could include:</p> <ol style="list-style-type: none"> 1. A percentage of the entire project as awarded; 2. A guaranteed maximum price, with or without shared savings if the project is under budget; or 3. A sliding scale of costs of prime trade contracts as awarded. <p>Typically, a CM firm is compensated pursuant to a sliding or a flat percentage based on the total of the bids received from each of the trade contractors awarded contracts for the project, excluding additive change orders.</p>
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ♦ Fully executed contract, including payment schedule ♦ Board approval ♦ Invoice for CM services, approved by district representative <p>CONTRACTOR’S LICENSE</p> <p>Authority</p>
BPC §7028, 7059	All businesses or individuals who construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California Contractors State License Board (CSLB) if the total cost (labor and materials) of one or more contracts on the project is <u>\$500 or more</u> .
BPC §7030	Every licensed contractor must include a statement, prescribed in the Business and Professions Code, on all written contracts with respect to which the person is a prime contractor. The statement indicates the license requirement and information about the complaint process.
BPC §7048	Any person performing work costing less than \$500 who is not licensed shall disclose to the purchaser of the work the fact that he or she is not licensed by the Contractor’s State License Board.
PCC §3300	Districts are required by law to specify the necessary classification of contractor’s license that a successful bidder must hold at the time of award of a contract. Bid documents prepared by

Reference

	<p>school districts should, therefore, clearly specify the classification of contractor's license which contractors submitting bids must possess at the time the contracts are awarded.</p>
BPC §7028.15	<p>California Business and Professions Code §7028.15 requires that school districts, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. A bid submitted by a contractor who is not properly licensed must be considered non-responsive and rejected by the district. <u>Any contract awarded to a contractor who is not properly licensed is void.</u></p> <p>A public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not properly licensed may be cited and assessed civil penalties by the Contractors State License Board. A public officer or employee is not, however, subject to a citation if the officer, employee, or employing agency made an inquiry to the Contractors State License Board for the purposes of verifying the license status of any person or contractor and the Board failed to respond to the inquiry within three business days.</p>
BPC §7031	<p>A person who uses the services of an unlicensed contractor may bring an action in court to recover all compensation paid to the unlicensed contractor for the performance of any act or contract.</p> <p>Districts may check the status of a contractor's license online at the CSLB website: www.cslb.ca.gov</p> <p>Additional information regarding the laws and regulations pertaining to licensed contractors, including contractor classifications, can be found at the same website.</p>
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Contractor's license number should appear on the invoice and checked for validity <p>CONTRACTOR REGISTRATION AND REPORTING (PWC-100)</p>
SB 854	<p>Effective January 1, 2015: The Notice Calling for Bids and contract documents must include the following information:</p>
LC §17720, LC §1725.5	<ul style="list-style-type: none"> ➤ No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. ➤ No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. ➤ This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
<i>See also: Part One Bidding Requirements Page 4</i>	<p>The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)</p> <p>Effective July 1, 2017, SB 96 increased the registration and PWC-100 reporting limit as follows:</p> <ul style="list-style-type: none"> ➤ \$15,000 for public projects

<p>Reference SB 96</p>	<p>➤ \$25,000 for maintenance projects</p>
<p>✓</p>	<p><u>Minimum Documentation for Audit</u></p> <p>◆ Contractor’s DIR registration should appear on the invoice and checked for validity or copy of DIR registration attached to voucher</p>
	<p>DESIGN-BUILD CONTRACTS</p>
<p>EC §17250.10 et seq. EC §81700 et seq.</p> <p><i>See Also: Part 3, Retention, Page 101</i></p>	<p>Authority</p> <p>Education Code Section 17250.10 et seq., effective January 1, 2002, authorizes school districts to use Design/Build as an alternative delivery method for new construction and modernization projects. Senate Bill 785, signed September 30, 2014 amended Education Code Section 17250.20 lowering the minimum project cost from \$2.5 million to \$1 million, effective January 1, 2015. Retention is limited to 5% if a payment and performance bond were required in the solicitation of bids.</p> <p>Under DBB, a district hires a design professional (typically an architect) to create documents from which general contractors will bid. The contractor selected to build the project is the responsible bidder who submits the lowest bid. Accordingly, the district enters into two contracts: one with the design professional and one with the general contractor.</p> <p>Design/Build is a method of project delivery that combines the design and construction functions and vests the responsibility for such functions with one entity: the design-builder.</p> <p>The project delivery method requires:</p> <ol style="list-style-type: none"> 1. The school district hold a public meeting to evaluate whether the Design/Build or traditional Design/Bid/Build method is suited to the project. 2. The governing board make a determination in writing that Design/Build delivery will reduce project costs, expedite the project’s completion, or provide features not achievable through the Design/Bid/Build process. 3. The governing board review Design/Build guidelines and adopt a resolution approving Design/Build. 4. The school district establish the procedure to pre-qualify Design/Build entities, including the questionnaire provided by the Department of Industrial Relations. 5. The school district verify that the prequalification procedure includes requirements stated in Education Code §17250.25(b). 6. The RFP satisfies Education Code §17250.25(a) and (c), which identify requirements for the project description, evaluation criteria, and selection process. 7. The governing board issue a written decision supporting its contract award and stating in detail the basis of the award. 8. The governing board make a public announcement of its decision in accordance with Education Code §17250.25 [c](2)(E). 9. The school district establishes and enforces a labor compliance program or other options as specified by Education Code §17250.30(d). 10. The school district obtains plan approval from the Division of State Architect (DSA) prior to any building construction. 11. The school district hires a DSA-certified inspector acceptable to the architect of record and structural engineer of record. 12. At the completion of a Design/Build project, the school district must submit a report to the Legislative Analyst’s Office within 60 days.

Reference

To help school districts with the Design/Build process, the California Department of Education (CDE) has developed a guidebook. A district considering the Design/Build delivery method is required by AB 1402 to review these guidelines. The 2002 CDE guidebook is available on the CDE's website at: [Design-Build Project Guidelines](#) Note: The information in the guidebook may be outdated due to new requirements.

Districts who are considering Design/Build should consult with their legal counsel.

✓

Minimum Documentation for Audit

*See Also:
Part 3,
Contractor
Payments,
Page 99*

- ◆ Governing board resolution approving Design/Build method. (Required only one-time only with the 1st payment at the beginning of the project.)
- ◆ Governing board written decision supporting its contract award and stating in detail the basis of the award. (Required only one-time only with the 1st payment at the beginning of the project.)
- ◆ Fully executed Design/Build contract. (Required only one-time only with the 1st payment at the beginning of the project.)
- ◆ Contractor's license number.
- ◆ DIR registration number or copy of registration.

DIVISION OF STATE ARCHITECT

EC §17280-
17317, 17365-
17374

Authority

The Division of the State Architect (DSA) reviews plans for public school construction projects to ensure that plans, specifications, and construction comply with California's building codes (Title 24 of the California Code of Regulations).

EC §81130-
81147

DSA divides construction projects into five basic types: new construction, additions, alterations, relocation, and fire reconstruction. Descriptions for each of these categories may be found at the DSA website: www.dsa.dgs.ca.gov

EC §17295

Generally, any construction exceeding \$25,000* requires DSA approval. Districts have the option of not filing a DSA plan check application if the proposed project is less than \$100,000* and a licensed structural engineer certifies that the structure meets Title 24, CCR requirements. A copy of the engineer's report must be filed with DSA.

**These amounts are adjusted annually, as required by the Education Code. The 2019 limits are \$106,412 and not in excess of \$239,427.*

FEES

Filing fees are paid to the DSA with the project applications. There are separate fees for structural/fire and life safety, and access compliance that are based on the estimated construction costs. A "Plan/Field Review Fee" calculator is available from the DSA website.

INSPECTORS

DSA-certified inspectors work under the general direction of the district's architect. The inspector's role is to continuously observe the construction or alteration in all stages of its progress to ensure that the requirements of the plans, specifications, and applicable codes and

Reference	
	<p>regulations are being exactly and completely executed. The inspector should approve all payment applications.</p> <p>A list of certified DSA school construction inspectors may be accessed at the DSA website.</p> <p>Effective March 1, 2015, DSA inspectors are required to register with the Division of Industrial Relations. Effective July 1, 2017, the threshold for registration is \$25,000.</p>
SB 854 & SB 96	
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ DSA application with fee calculation ◆ DIR registration number or copy of registration <p>EMINENT DOMAIN (“Condemnation”)</p> <p>Authority</p> <p>CCP §1240.10-1240.50</p> <p>Eminent domain, also called “condemnation,” is the power of government agencies, including school districts, to acquire property for public use provided the owner is paid “just compensation.” The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:</p> <ol style="list-style-type: none"> 1. The public interest and necessity require the project. 2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury 3. The property sought to be acquired is necessary for the project. <p>GC §7267.2 CCP 1245.210 et seq.</p> <p>Government Code §7267.2 requires government agencies to obtain an independent fee appraisal and make an offer to the owner of record of real property to be acquired before any court proceedings may commence. Additionally, the school district must hold a public hearing to adopt a formal “resolution of necessity” to acquire the property by eminent domain.</p> <p>CCP §1255.010 et seq.</p> <p>When an eminent domain case is filed in court and served on the property owner, the school district must deposit the probable amount of “just compensation” with the court.</p> <p>If a final settlement cannot be reached after the eminent domain proceedings are filed with the court and offers and demands are exchanged, a trial takes place before a jury whose job it is to determine the “fair market value” of the property. The school district must pay the judgment within 30 days following entry of the judgment.</p> <p><i>School districts should work closely with their legal counsel throughout the eminent domain process.</i></p>
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Copy of “Resolution of Necessity” adopted by the governing board ◆ Summary of the basis of the offer and/or copy of the district’s appraisal report ◆ Copy of court judgment, if applicable

Reference

LABOR COMPLIANCE PROGRAM

Authority

Most provisions of the Labor Compliance Programs for schools sunset on July 1, 2012. The following information is directly from the CSLB website: <https://www.dir.ca.gov/lcp.asp>

DIR Approval of Labor Compliance Programs (LCPs)

The Director of Industrial Relations only approves and regulates awarding body LCPs that are required or authorized by state [statutes](#). As of 2016, LCPs were only required for public works projects funded by Proposition 84 (Safe Drinking Water, etc. Bond Act of 2006) as well as for certain older projects under a handful of other statutes. DIR also continues to oversee four [Legacy LCPs](#) that were approved prior to 2000. The Director does *not* approve or regulate any other LCPs or other types of compliance monitoring programs or consultants.

- [FAQs about LCPs, including when and how to go about adopting a DIR-approved LCP for a project funded by Proposition 84](#)
- [Statutes Authorizing or Requiring DIR-approved LCPs](#)
- [Application for Approval of a Labor Compliance Program](#)
- [Lists of DIR-approved LCPs](#)
- Posting of [Annual Reports](#) submitted by DIR-approved LCPs

✓

Minimum Documentation for Audit

- ◆ Copy of fully executed Lease-Lease Back Contract Documents (Construction Services Agreement, Lease Agreement, and Sublease Agreement), with required signatures
- ◆ Excerpt from governing board minutes approving the agreements
- ◆ Payment schedule
- ◆ Invoice/Payment Application preferably signed by a district official(s)

LEASE-LEASE BACK CONTRACTS

EC §17406

Authority

The Lease-Lease Back (LLB) process establishes a contract by which the district owns a piece of property and leases it for what is usually a nominal amount to an entity that is obligated to construct a school on that site. That entity then leases the completed school and site back to the district for a specified period of time at a specified rental amount. At the end of the lease, the school and site then become the property of the school district.

Education Code §17406 allows the governing board of a school district, without advertising for bids, to let:

“for a minimum rental of one dollar (\$1) a year to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term.”

Reference

This provision contemplates that the “person, firm, or corporation” to which the school district’s property is leased, will build (or make improvements to) a building or buildings on the property. Typically, the “person, firm, or corporation” leases the property back to the school district with terms and conditions that provide for construction of the project, repayment of borrowed funds, and other terms specific to the project. This arrangement can include a pre-negotiated cost of the construction project, also known as a “guaranteed maximum price.”

Whether this method is legally permissible for a particular project depends on several factors such as the type of facility involved, the type of financing to be used, use of the property during construction, and the contract structure. Therefore, the use of legal counsel is essential to determine the viability of this method for the particular project and the preparation of necessary documents.

AB 566 added two requirements to the lease-leaseback statutes, Education Code sections 17406 and 17407, and added section 17407.5 effective January 1, 2016. The amended laws requires:

- 1) Prequalification of lease-leaseback contractors and mechanical, electrical, and plumbing subcontractors, under Public Contract Code section 20111.6, for lease-leaseback projects in excess of \$1 million dollars, regardless of the funding source.
- 2) Addition of Education Code section 17407.5 requires that each subcontractor, at any tier, must employ a “skilled and trained workforce” for each “apprenticeable occupation” on a lease-leaseback project. An “apprenticeable occupation” is defined as an occupation for which the chief of the Division of Apprenticeship Standards of the Department of Industrial Relations (“Chief”) has approved an apprenticeship program prior to January 1, 2014. The “skilled and trained workforce” is defined as a workforce that meets all of the following conditions:
 - a) all workers are either skilled journeypersons or apprentices registered in an approved apprenticeship program and
 - b) beginning on January 1, 2016, 30% of the skilled journeypersons for each “apprenticeable occupation” must have graduated from an approved apprenticeship program.

Effective
Jan. 1, 2017

On September 23, 2016, Governor Brown signed AB 2316 into law which adds the following provisions to the lease-leaseback statutes:

- 1) Governing boards to adopt and publish procedures establishing a competitive “best value” procurement.
- 2) Requires school districts to continue to use the prequalification process to select possible lease-leaseback contractors and subcontractors.
- 3) Allows the lease-leaseback contractor perform pre-construction services.
- 4) Requires school districts to provide an estimate of the price of the project in a request for proposals.
- 5) Requires school districts to use an RFP that outlines the criteria and evaluation methodology for award.
- 6) Requires formal advertising of the RFP
- 7) Affords subcontractors who will perform more than ½ of 1% of the price of the construction work the protections commencing with Section 4100 of the Public Contract Code et seq.
- 8) School districts must publicly announce the award and basis for the award.

This bill does not remove the potential for a GC 1090 conflict of interest. It is very important that districts consult with their legal counsel.

CC §9200

Reference	
	<p>NOTICE OF COMPLETION</p> <p>Authority</p> <p>CC §9356 Before the final payment (retention) is made on a public project, the district’s governing board <i>should</i> take action accepting the project as complete. Otherwise, effective July 1, 2012, “completion” is defined as the date of the owner’s acceptance of the project or the 60th continuous day of cessation of labor, whichever occurs first.</p> <p>CC §8102 A Notice of Completion is then recorded with the County of Santa Barbara for the purpose of giving public notice that the final payment will be made following the <u>30 day</u> stop payment notice filing period. This sets forth the final period during which subcontractors may file stop payment notices with the district. If the district does not file a Notice of Completion with the County Recorder’s Office, they will be subject to stop payment notices for a period of <u>90 days</u>.</p> <p>CC §9204 “Notice of Completion” means a written notice, signed and verified by the owner or his agent, containing all of the following:</p> <ol style="list-style-type: none"> The date of completion (other than a cessation of labor). The name and address of the owner. The nature of the interest or estate of the owner. A description of the site sufficient for identification, containing the street address of the site, if any. The name and address of the direct (original) contractor. <p>The Notice of Completion must be recorded in the Office of the County Recorder in which the site is located within 15 days after such completion.</p> <p>If a claimant pays the district \$10 at the time it services a stop payment notice, the district is obligated to provide the claimant a Notice of Completion not later than 10 days after the completion of the public works contract. The notice must inform the stop payment notice claimant of the deadline to commence an action to enforce the stop payment notice. Notice must be given by personal delivery, registered or certified mail, express mail, overnight delivery, or in the manner for serving a summons and complaint in a civil action.</p> <p>IMPORTANT NOTE: The Notice of Completion does not drive the release of retention. The NOC starts the clock for the Stop Payment Process.</p> <p>✓ <u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Executed copy is only required if district policy calls for an NOC to be recorded or for board acceptance of a project.
EC §17603	<p>CONTRACTOR PAYMENTS</p> <p>Authority</p> <p>PCC §9203 In general, progress payments by a school district are made as the governing board may specify in the bid documents. The governing board of a school district is required to determine the method of payment for construction contracts, including progress payments for completed portions of the work or for materials delivered on the ground or stored subject to the control of the board and unused.</p> <p><i>See Also: Part 3, Retention, Page 102</i></p> <p>Contracts with school districts for public projects which will exceed a total of \$5,000 must provide for the retention of a <u>minimum of 5 percent</u> of any progress payments. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance</p>

Reference

PCC
§20104.50

of the project as well as withhold of not less than 5 percent of the contract price until final completion and acceptance of the project. At any time after 50 percent of the work has been completed, the governing board, if it finds that satisfactory progress is being made, may make any remaining progress payments in full for actual work completed.

SB 614 (Simitian), Chapter 471 prohibits retention proceeds withheld by the district on **Design-Build** contracts to exceed 5 percent if a performance and payment bond is required in the solicitation of bids.

It should be noted that the Public Contract Code provides that “[a]ny local agency which fails to make any progress payment within thirty days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.” The section also requires review of payment requests “as soon as practicable after receipt.” In addition, it provides that any payment request found improper “shall be returned to the contractor...not later than seven days after receipt.” The returned request must be accompanied by a statement in writing as to why the payment request was not proper. The time after which interest may be due on late payment of a progress payment is shortened if improper payments are not clarified within seven days of receipt. Disputed payments may not necessarily be subject to the same interest payment obligations. Also, progress payments do not include the final retention payment.

*See Also:
Part 4,
Exhibit 4*

Best Practice:

Payment requests may be submitted via an “Application and Certificate for Payment” which requires the contractor to show the status of the contract sum to date, including the total dollar amount of the work completed and stored to date; the amount of retention; the total of previous payments; a summary of change orders; and the amount of current payment requested. There is no legal requirement use this format; however, some construction documents may require AIA forms G702 & G703 be used by the contractor for submission of payment requests.

Any form of application for payment should be signed by the contract, the district representative, and certified by the architect that the amount is due. Additionally, the Division of State Architect (DSA) inspector should review and sign the payment application.

✓

Minimum Documentation for Audit

- ◆ Board approval. (Required one-time only at the beginning of the project.)
- ◆ Copy of fully executed agreement between contractor and school district, including signatures. (Required one-time only at the beginning of the project.)
- ◆ Application and Certificate for Payment, with schedule of values attached showing work completed to date. Payment application should be signed by: contractor, architect, inspector, and district representative.
- ◆ If the payment application includes change orders, a copy of the change order(s), containing the same required signatures indicated above, should be attached. The change orders should indicate the governing board approval date.
- ◆ If retention is being sent to an escrow account, a separate warrant for the amount of the retention should be processed at the same time as the payment to the contractor.

Reference LC §1771 LC §1720	<p>PREVAILING WAGES</p>
	<p>Authority</p>
	<p>The Labor Code requires that prevailing wage rates be paid to all workers employed on public works projects of \$1,000 or more.</p>
LC §1773.2	<p>Assembly Bill 1598 (Chapter 810) amended section 1720 of the Labor Code, <u>effective January 1, 2013</u>. For purposes of prevailing wages, the assembly and disassembly of freestanding and affixed modular office systems is included within the definition of “installation” used to define public works under this section of the Labor Code.</p>
LC §1720.3	<p>The awarding body (school district) is required to include in its bid invitations and contracts (or purchase orders) language calling the contractor’s attention to the prevailing wage requirement and where such rates are on file. Prevailing wage rates may be found at the Division of Labor Statistics and Research website: Prevailing Wage Determinations</p> <p>For purposes of the prevailing wage requirement, the hauling of refuse from a public works site to an outside disposal location is considered “public works.”</p>
EC §17405 PCC §20111 PCC §20651	<p>RELOCATABLE/MODULAR/PORTABLE BUILDINGS</p>
<p><i>See Also:</i> Part 3 <i>Lease or</i> <i>Lease-</i> <i>Purchase</i> <i>Relocatables,</i> <i>Page 97</i> <i>Other Local</i> <i>Agency</i> <i>“Piggyback</i> <i>Bids”,</i> <i>Page 76</i></p>	<p>Authority</p> <p>“Relocatable structure” is any structure that is designed to be relocated.</p> <p>The purchase of relocatable structures falls under the definition of personal property when the installation is incidental and the applicable bid limit is \$92,600 (as of 2019, adjusted annually by the Superintendent of Public Instruction). However, when the cost of a relocatable building not purchased using a competitive bid is combined with the cost of the site work and installation, the project would fall under the \$15,000 bid threshold.</p> <p>Note: Although Attorney General Opinion 05-405 concluded that the purchase of <u>modular</u> buildings to be placed on <u>permanent foundations</u> may not be acquired through a piggyback bid, relocatable buildings are not included in this prohibition. Site work and installation must be competitively bid if the total costs exceed \$15,000.</p>
<p>✓</p>	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Board minutes excerpt approving award of bid. Note: if using another public agency’s cooperative bid, provide: <ol style="list-style-type: none"> 1. A copy of the board resolution authorizing the district to purchase from the bid; 2. The public agency clause from awarding district’s bid; and 3) bid form/pricing sheet from awarding district’s bid. ◆ Fully executed agreement between district and relocatable vendor, including authorized signatures and payment schedule. ◆ Invoice, preferably signed by district official approved by authorized district representative.

Reference

RETENTION

PCC §9203

Authority

Contracts with a school district for the creation, construction, alteration, repair or improvement of a public work which will exceed a total of \$5,000 must provide for the retention of a minimum of 5% of any progress payments as well as the withhold of not less than 5% of the contract price until final completion and acceptance of the project.

PCC §7201

At any time after fifty percent of the work has been completed, the governing board, *if it finds that satisfactory progress is being made*, may make any remaining progress payments in full for actual work completed. Note: Governing board action is required to reduce retention.

PCC §22300

Senate Bill 293 added Section 7201 to the Public Contract Code limiting the amount of retention proceeds that may be withheld on all public contracts executed after January 1, 2012. Effective that date, retention proceeds withheld from any payment by a public entity may not exceed 5% of the total payment. The only identified exception to the 5% retention limit is when a public entity approves a finding that a project is “substantially complex” during a properly noticed and regularly scheduled public meeting prior to bidding the project. Whether a project is substantially complex for purposes of requiring retention in excess of 5% must be analyzed and approved on a project-by-project basis. The finding and the designated retention amount must be included in the project bid documents.

Whenever bid or contract documents require the retention of a percentage of the contract price by a public agency to ensure performance, they must also include provisions to permit the substitution of securities for the monies withheld by the public agency. Failure to include these provisions in bid and contract documents will void any provisions for performance retentions in the public agency contract. Such substitution of securities provisions are not, however, required where federal regulations or policies do not allow the substitution of securities.

GC §16430

PCC §22300

ESCROW AND SECURITIES IN LIEU OF RETENTION

At the request and expense of the contractor, securities equivalent to the amount withheld may be deposited with the public agency or with a state or federally chartered bank as the escrow agent. Securities eligible for deposit include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the school district. Upon deposit of the securities, the school district must then pay the monies withheld to the contractor. The contractor is the beneficial owner of the securities substituted for monies withheld and receives any interest thereon. Upon satisfactory completion of the contract, the securities are returned to the contractor. In order to be valid, the escrow agreement must be substantially similar to the form set forth in Public Contract Code §22300.

As an alternative to the contractor depositing securities with an escrow agent so that the owner would pay the retention to the contractor, Public Contract Code §22300 requires that the owner, upon written request of the contractor, must pay retentions earned directly to the escrow agent. Public Contract Code §22300 further provides that the contractor may direct the investment of the payments into securities and shall receive the interest earned on the investment. Upon satisfactory completion of the contract, the escrow agent gives the contractor all securities, interest, and payments received by the escrow agent from the owner.

PCC §7107

RELEASING RETENTION

Within 60 days after the date of completion of the work of improvement, the retention withheld by the school district shall be released. In the event of a dispute between the school district and

Reference

See Also:
Part 3,
Stop Payment
Notices,
Page 104

the original contractor, the school district may withhold from the final payment an amount not to exceed 150% of the disputed amount. "Completion" means any of the following:

1. The occupation, beneficial use, and enjoyment of a work of improvement.
2. The acceptance by the school district, 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 school district files for record a notice of cessation or a notice of completion.

The governing board should take action to accept the public project as completed.

NOTE: The release of retention is not based on filing of a Notice of Completion with the County Recorder. The clock on retention may start ticking prior to filing an NOC if the district has beneficial occupancy before final completion.

✓

Minimum Documentation for Audit

- ◆ Excerpt from governing board minutes accepting project as completed and/or
- ◆ For reduction of retention: excerpt from governing board minutes indicating that satisfactory progress has been made on the project and approving the retention reduction.
- ◆ For retention payments made to an escrow account: copy of the escrow agreement. Note: retention payments should be made at the same time as the progress payments to the contractor.

For securities in lieu of retention: copy of the agreement including a statement showing the value of securities on deposit. Note: the value must be at least equal to the current retention requirement. If this requirement is met, no retention is withheld from the amount due the contractor.

EC §17212

SITE PURCHASE

The governing board, prior to acquiring any site on which it proposes to construct any school building, shall have the site under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective school site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in Government Code §65302(g), the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

PRC §21151.2

Also, the governing board before acquiring title to property for a new school site or for an addition to a present school site, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a

Reference

school site, or for an addition to a present school site, the governing board shall not acquire title to the property until 30 days after the commission's report is received.

There are many factors to be considered when selecting a school site and it involves several agencies. Additional information may be obtained from the California Department of Education website at: www.cde.ca.gov/ls/fa/sf/sitereview.asp

✓

Minimum Documentation for Audit

- ◆ Excerpt from governing board minutes approving site purchase, including authorization for execution of escrow. Note: Escrow instructions should be approved by the district's legal counsel
- ◆ Copy of escrow instructions, indicating legal counsel's approval

STOP PAYMENT NOTICES

CC §9350-9352

*See Also:
Part 3
Payment
Bond,
Page 90*

Authority

The law provides persons performing labor or supplying materials or equipment for works of improvement on *privately-owned* property with a mechanic's lien to assure them of payment. However, mechanic's liens do not apply to any *public* work (i.e., public projects). There are two primary legal devices provided persons performing labor or supplying materials or equipment on public jobs; they are labor and material payment bonds and stop payment notices. While no mechanic's lien or material supplier's liens can be filed against the public property on a public works contract, such claimants are entitled to the use of stop payment notices.

The stop payment notice functions as a demand by the "claimant" that the owner withhold for the claimant's benefit sums which would otherwise be paid to the general contractor. The filing of a valid stop payment notice imposes a trust upon the public agency holding the funds, and if the agency fails to comply with the stop payment notice, even if unintentionally, it may be liable to the claimant (or the surety company) who has made payment to the claimant.

CC §9358
PCC §10263
PCC §22300

California Civil Code §9358 provides as follows:

"(a) The public entity shall, upon receipt of a stop payment notice, withhold from the direct (original) contractor sufficient funds due or to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. (b) The public entity may satisfy its duty under this section by refusing to release money held in escrow pursuant to Section 10263 or 22300 of the Public Contract Code."

A stop payment notice is effective, however, only as to funds still held by the owner. If insufficient funds are left at the time the stop payment notice is filed (e.g., due to progress payments to the original contractor), the owner has no duty to obtain funds sufficient to enable it to withhold the stop payment notice amount.

A stop payment notice filing does not result in immediate payment of the claimed funds by the public entity to the claimant. Rather, (unless the public entity has permitted the filing of another bond by the contractor and released the funds in return), the public entity will retain possession of the funds until entitlement thereto (if contested) has been determined by a court.

Reference

CC §9350 et seq.	The district should establish procedures for handling stop payment notices. Stop payment notices MUST be honored and it is recommended reasonable litigation costs be withheld. Generally, 125% of the stop payment notice amount.
CC §9300-9306	There are detailed statutory procedures, forms and timelines for the filing and enforcement of stop payment notices at California Civil Code §9350 and following. The general procedures are as follows:
CC §9356	<ol style="list-style-type: none"> 1. A potential claimant who does not have a direct contractual relationship with the contractor, and is not a laborer, must file a "Preliminary Notice" within twenty days of start of any work which is the subject of the stop payment notice or claim in payment bond. This requirement is to protect the owner from claims by "secret" subcontractors or suppliers and does not require any response by the owner.
CC §9358(a) <i>See Also: Part 3 Notice of Completion, Page 98</i>	<ol style="list-style-type: none"> 2. A stop payment notice in the form required by Civil Code sections 9352(a) and 8102 must be verified and served before the expiration of: <ol style="list-style-type: none"> a. 30 days after the recording of a notice of completion or cessation, or b. If no such notice is recorded, 90 days after completion or cessation. 3. The public agency withholds funds pursuant to the stop payment notice. 4. If the claimant has paid ten dollars at the time of filing the stop payment notice, the public agency must notify the claimant within ten days after the date of the filing of the notice of completion, the acceptance of completion or the cessation, of the expiration of the period for filing stop payment notices.
CC §9362	<ol style="list-style-type: none"> 5. The public agency may, in its discretion, permit the contractor who disputes the stop payment notice to file a stop payment notice release bond in the amount of 125% of the stop payment notice amount, in which case no withhold shall be made. The surety issuing this bond must be different from the one issuing the payment bond on the job. The statute does not require the public agency to notify the claimant of the filing of the bond.
CC §9400, et seq.	<ol style="list-style-type: none"> 6. A contested stop payment notice may be determined under a summary adjudication procedure involving an affidavit and demand for release from the contractor, a counter-affidavit from the claimant and the filing of an action in Superior Court.
CC §9502	<ol style="list-style-type: none"> 7. An action to enforce the stop payment notice in court must be filed after ten days from the date of service of the stop payment notice on the public agency and not later than ninety days following the expiration of the period for filing stop payment notices, or else the stop payment notice ceases to be effective.
PCC §10240, 20104	<p>School districts must be sensitive to several issues when a Stop Payment Notice proceeds to litigation, particularly, when there are multiple Stop Payment Notice claimants and/or where the withheld funds are insufficient to satisfy all Stop Payment Notice claims in their entirety. Unless a Stop Payment Notice Release bond has been posted, the Stop Payment Notice litigation will necessarily include the public agency as a party since it is the holder of the withheld funds. Release or other disposition of funds withheld on account of Stop Payment Notices will be in accordance with the judicial determination of the Stop Payment Notice claimant's rights. The right to properly contest stop payment notices funds must not be determined by the public agency, but rather by the appropriate court.</p>
	Construction claims for public works may be resolved by the district and contractor under arbitration or meet and confer processes.
	RELEASE OF STOP-PAYMENT NOTICE
	The extent of the school district's ability to release the funds withheld for the Stop Payment Notice will require an evaluation of the form and content of the Release of Stop Payment Notice. In the review of the Release of Stop Payment Notice primary considerations are confirmation that the Release specifies and relates to the Stop Payment Notice in question, that it is duly

Reference

CC §9200

executed by an individual with authority to act on behalf of the claimant and the extent to which the Stop Payment Notice is released. Where the Release of Stop Payment Notice does not extend to the entirety of the Stop Payment Notice claim, the public agency must continue to withhold the amount of the “unreleased” portion of the Stop Payment Notice.

In addition, the date of the filing of the Notice of Completion or Notice of Cessation of Work must also be identified. Effective July 1, 2012, “completion” is defined as the date of the owner’s acceptance of the project or the 60th continuous day of cessation of labor, whichever occurs first.

Sample Checklist for Stop Payment Notices**Stop Payment Notice**

Project: _____

Site: _____

- ☐ Filed by _____ Date received _____
- ☐ Against Contractor _____
- ☐ Contractor License Number _____
- ☐ Amount (Record amount plus litigation costs) \$ _____
- ☐ Contract amount payable \$ _____
- ☐ Withheld from payment application # _____
- ☐ Was Stop Payment Notice filed by subcontractor named in bid? YES / NO
- ☐ If “NO,” was “Preliminary Notice” received within 20 days of the start of the work subject to the Stop Payment Notice? YES / NO
- ☐ Stop Payment notice Release received from claimant on (Date) _____ OR
- ☐ Stop Payment Notice Release Bond received from prime contractor (Date) _____
- ☐ Surety for Stop Payment Notice Release Bond _____
- ☐ Amount of Bond \$ _____
(must be 125% of the amount of the stop-payment notice)
- ☐ Surety for stop-payment notice release bond different from payment bond surety?
OR
- ☐ Summary adjudication: prime contractor’s affidavit received? Date: _____
- ☐ Affidavit sent to stop-payment notice claimant (must have proof of service)
Date: _____ Via: (personal service, registered mail, certified mail)
- ☐ Counter-affidavit received from stop-payment notice claimant? Date: _____
(Must be not less than 10 days nor more than 90 days after the expiration of time within which a stop payment notice must be given)
- ☐ If NO counter-affidavit received within statutory timeframe, district must release withheld stop-payment notice funds.
- ☐ If counter-affidavit IS received within statutory timeframe, wait for outcome of judicial proceedings.

✓

Minimum Documentation for Audit

- ◆ When withholding fund from payment applications for public works for Stop Payment Notices, provide a copy of the Stop Payment Notice and the district checklist that specifies pertinent information included in the above sample.

Reference

REIMBURSEMENTS & REVOLVING CASH FUNDS**Associated student Body (ASB)****Authority**

EC §48930

Any group of students may organize a student body association within the public schools with the approval and subject to the control and regulation of the governing board of the school district. Any such organization shall have as its purpose the conduct of activities on behalf of the students approved by the school authorities and not in conflict with the authority and responsibility of the public school officials.

In assuming the authority given by the Education Code, a school district governing board must adopt regulations that govern:

1. The establishment of a student body organization;
2. The supervision of the organization's activities; and
3. The operation and management of the organization's finances

There are two types of student bodies: unorganized and organized.

EC §48934

An unorganized student body is typically found in elementary schools at the K-6 grade levels and is not governed by the students. Unorganized student bodies are also allowed in schools or classes for adults and regional occupational centers or programs. The governing board may appoint an employee or official to act as trustee for student body funds and to receive said funds in accordance with procedures established by the board. The board-appointed "trustee for the student body," generally the school site principal or administrator, has authority over the organization and activities of the ASB. An unorganized student body may use funds to pay for non-instructional periods or to augment or enrich the programs provided by the district.

EC §48938

EC §48933(b)

An organized student body is typically found at junior and senior high schools. Funds expended are subject to the approval of each of the following three persons which should be obtained each time before any of the funds are expended:

1. An employee or official of the school district designated by the governing board;
2. The certificated employee who is the designated adviser of the particular student body organization; and
3. A representative of the particular student body organization

The basic purpose of raising and expending money by a student body is to promote the general welfare, morale, and educational experiences of the student body. Student body funds must be used to promote and finance a program of worthwhile co-curricular activities beyond those provided by the district. Student body funds should not be used to pay for the obligations of the school district, even if the district agrees to reimburse the student body organization.

EC §48933

Student body funds must be invested in one or more of the following:

- ◆ A federally insured bank (FDIC)
- ◆ A federally insured savings and loan (FSLIC)
- ◆ Repurchase agreements issued by a bank or savings and loan
- ◆ US government notes and bonds
- ◆ An insured credit union

Although the student body funds are invested and expended outside of the County of Santa Barbara Treasury, the governing board is the controlling authority for all funds of the student

Reference

body. Additionally, the funds are subject to an annual audit by the school district's external auditor.

For more detailed information, districts may want to obtain one or both of the following publications: "Accounting Procedures for Student Organizations," available from the California Department of Education; and "Associated Student Body Accounting Manual and Desk Reference," published by the Fiscal Crisis & Management Assistance Team and available on their website at: <http://fcmat.org/2015-asb-accounting-manual-fraud-prevention-guide-and-desk-reference/>

✓

Minimum Documentation for Audit

Although it should be uncommon for a school district to issue an accounts payable (commercial) warrant to a student body organization, the following audit documentation will be required:

- ◆ Invoice from ASB
- ◆ Proof of Payment by ASB, if district payment is a reimbursement
- ◆ Authorized district approval for payment

Damaged/Lost or Stolen Personal Property**Authority**

The board may, by policy or employee contract, provide for the payment of cost of repairing/replacing employees' property which is damaged or stolen in the line of duty. Limits may be established for the payment of such damaged or stolen property.

EC §35213

The governing board of a school district may provide by rule or regulation for the reimbursement of any person or persons for the loss, destruction, or damage by arson, burglary or vandalism of personal property used in the schools of the district. Reimbursement shall be made only when approval for the use of the personal property in the schools was given before the property was brought to school and when the value of the property was agreed upon by the person or persons bringing the property and the school administrator or person appointed by him for this purpose at the time the approval for its use. The governing board may establish a maximum value of reimbursement which will be paid.

✓

Minimum Documentation for Audit

- ◆ Invoice/billing for cost of repair, replacement, or reimbursement
- ◆ Proof of employee's insurance deductible, as applicable, for automobile repairs
- ◆ Copy of board policy or excerpt from employee contract providing authorization

Employment Candidate Expenses**Authority**

EC §44106

Whenever any person is requested by a school district to travel to the headquarters of such district for the purpose of being interviewed and examined prior to possible employment, the district may reimburse such candidate for expenses necessarily incurred in traveling from his place of residence to the place of interview or examination.

Reference ✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Invoice and receipts for reimbursement indicating “employment candidate,” preferably signed by district official <p>Board Members Mileage Reimbursement</p>
EC §35160	<p>Authority</p> <p>A mileage payment to a board member must be supported by a statement or claim containing the following:</p> <ol style="list-style-type: none"> 1. Board member name 2. Date(s) of board meeting(s) attended 3. Start and stop locations 4. Rate of reimbursement
✓	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Board policy ◆ Invoice/mileage claim <p>Employee Mileage Reimbursement</p> <p>Authority</p> <p>Employees may be reimbursed for the use of their personal cars when performing services for the district. If a per mile rate is established by the governing board, a statement or claim must accompany the warrant containing the following:</p> <ol style="list-style-type: none"> 1. Employee’s name 2. Period covered 3. Start and stop locations (excluding miles due to personal use) 4. Rate per mile 5. Amount <p>If a monthly mileage allowance is established by the governing board, an excerpt or contract as to this authorization is to be filed with the San Diego County Office of Education, and the invoice must indicate that payment is for the use of a personal car for that month.</p>
IRS Publication 17	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> ◆ Board policy and/or excerpt of contract (for monthly stipend) ◆ Mileage claim/invoice and supporting documentation (Mapquest/Google Maps) <p>Note: Employees that do not have a permanent job location must be given a designated main place of business:</p> <p>If you have more than one place of business or work, consider the following when determining which one is your main place of business or work.</p> <ul style="list-style-type: none"> • The total time you ordinarily spend in each place. • The level of your business activity in each place.

Reference

- Whether your income from each place is significant or insignificant.

Districts should be aware that there are various Internal Revenue Service (IRS) requirements relative to mileage reimbursement and car allowances. Information may have to be reported to the IRS as income to the individual in certain cases; e.g., reimbursing business mileage at greater than the standard IRS rate; and providing a lump-sum car allowance whereby actual business miles are not logged. Contact your district payroll department or the County Office payroll unit for more information.

Parents / Guardians Transportation Reimbursement

EC §39806

Authority

The governing board of a school district may contract with the parent or guardian of a pupil being transported.

In lieu of providing in whole or in part for the transportation of a pupil attending the schools of a district, the governing board may pay to the parents or guardian of a pupil a sum not to exceed the cost of actual and necessary travel incurred in transporting such pupils to and from the regular day schools of the district. No payments shall be made pursuant to this authority unless it will be more economical to make the payments than to provide for the transportation.

✓

Minimum Documentation for Audit

- ◆ Board policy/approval for reimbursing parents or guardian
- ◆ Signed agreement between district and parents/guardian
- ◆ Invoice from parent/guardian

IRS Ruling
60-280

An IRS Revenue Ruling holds that reimbursement by a school district to parents/guardians for expenses incurred in transporting children to and from school where bus service was not made available is not taxable income.

Miscellaneous Expense Claims

Authority

EC §35160

Occasionally, employees may incur expenses for transactions that could not otherwise be procured via a purchase order or other district procedures. Examples include food items purchased for a district meeting, or supplies from vendors that do not accept purchase orders.

Approval should be given by the employee's supervisor prior to the purchase and such purchases should be limited both in frequency and amount expended. This process should not be used to contract for personal services.

✓

Minimum Documentation for Audit

- ◆ Claim form, which includes description and purpose of items purchased, signed by employee and approved by district official
- ◆ Original, itemized receipts

Reference

EC §35160

Moving Expenses

District governing boards may approve reimbursement of job-related moving expenses for employees. The expenses can be paid to a third party directly by the school district or reimbursed to the employee under an Internal Revenue Service accountable plan. To be an accountable plan, the expenses must be of the type for which a deduction would be allowed the employee had he or she paid them; the expenses must be adequately accounted for to the school district within a reasonable period of time; and any excess reimbursement or allowance must be returned to the district within a reasonable period of time.

IRC §132

Allowable moving expenses include reasonable costs of moving household goods and personal effects and travel and lodging expenses (excluding meals) during the period of travel from the old to the new location.

Job-related moving expenses are considered a nontaxable fringe benefit under the Internal Revenue Code if the moving expenses are allowable as a deduction on the employee's personal income tax return. Two tests must be met in order for the moving expenses to qualify as a nontaxable fringe benefit:

1. Distance Test. The commuting distance must be at least 50 miles farther from the employee's former residence and the new work location.
2. Time Test. Employees must work in the area of the new job for 39 weeks in the 12 months following the move.

The IRS establishes a mileage rate for moving expenses. If employees are reimbursed at a higher mileage rate for the move, the difference between that rate and the current IRS mileage rate is taxable to the employee.

Contact your district payroll department or the County Office payroll unit for more information regarding W-2 reporting requirements.

Additional information may be obtained from IRS Publication 521, "Moving Expenses," available via the IRS website at: www.irs.gov/formspubs/index.html

✓

Minimum Documentation for Audit

- ◆ Board approval of moving expense reimbursement
- ◆ Invoices and/or receipts from employee or 3rd party

Developer Fees Refunds

EC §17620 et seq.

Authority

The governing board of any school district is authorized to levy a fee against any construction within the boundaries of the district for the purpose of funding construction or reconstruction of school facilities. These fees are known as "developer fees."

EC §17624
GC §65995(c)

Any school district that imposes any developer fees must repay the fee, less the amount of the administrative costs incurred in collecting and repaying the fee, if the project for which the fee was collected does not commence within prescribed time limits.

✓

Minimum Documentation for Audit

- ◆ Copy of payment originally collected from developer

Reference

- ◆ District-prepared statement indicating amount to be refunded, including the deduction of any administrative fee.

Student Fees

CCR5 §530
EC §39807.5

Authority

CDE Fiscal
Management
Advisory
12-02

“A pupil enrolled in school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.” The Education Code specifically authorizes certain fees, including home to school transportation. School districts may find it necessary to refund legally-authorized fees (i.e., school bus passes).

✓

Minimum Documentation for Audit

- ◆ Statement from district/request from parent or guardian indicating purpose and amount to be refunded

Revolving Cash Funds (RCF)

EC §42800
EC §42810
EC §42820
EC §38091

Authority

School districts may establish and operate a revolving cash fund to relieve the accounts payable (commercial) warrant process from writing numerous small warrants. The revolving fund is used when there is a need to issue a payment for services or supplies that has an urgent deadline which cannot be met through use of the regular accounts payable warrant issuance process. Education Code Section 45167 also authorizes payment to employees to alleviate errors made in payroll.

The establishment and maintenance of an RCF should be in accordance with the Education Code and the California School Accounting Manual. Districts may use one or more of the basic types of revolving cash funds.

General consideration for all types of Revolving Cash Funds:

1. Disbursements should be for clearly legal expenditures. If in doubt, contact the Accounts Payable (Commercial) Warrant Audit Unit.
2. Wage payments are not recommended. Exception: to correct errors made in payroll.
3. Each disbursement should be a full payment—not a progress payment.
4. A signed receipt should be prepared and signed by the payee for each RCF disbursement.
5. Keep records and receipts for the established retention period.
6. Voided checks should be kept on file.
7. Unused checks should be kept in a safe place and accessible only to authorized personnel.
8. RCF checks should be press-numbered (numbered by printer); identify the fund and the district.
9. An individual should be named as the custodian “payee” whenever possible.
10. Dual signatures are advisable but are not legally required.

EC §42800-5

RCF – Standard (EC §42800-5)

Establishment: The governing board may, with the consent of the county superintendent of schools, adopt a resolution establishing an RCF *for use by** the Chief Accounting Officer of the district. The resolution should set forth the necessity for the revolving cash fund, the officer for whom and the purposes for which the revolving cash fund shall be available, and the amount of

Reference

*See Also,
Part 4,
Exhibit 15*

the fund. The governing board may establish an account for the RCF in one or more banks, subject to such regulations for use as the governing board prescribes. The RCF shall be established by submitting to the county superintendent of schools an accounts payable (commercial) warrant payable to the officer for whose use the RCF is created, accompanied by two certified copies of the board resolution. Upon approval, the county superintendent shall endorse his consent on the resolution and return one copy to the district.

*Note: The RCF may be named _____ School District, Revolving Cash Account without naming the custodian to allow for personnel changes without having to close an account and reopen a new one.

Education
Code
42800(b)(2)

The custodian of the RCF must be covered either by an individual bond not less than double the amount of the RCF or pursuant to Education Code §41021 by a name schedule bond, schedule position bond, or blanket bond.

Fund Limit: The lesser of 2% of the district's estimated expenditures for the current fiscal year; or \$75,000 for any elementary or high school district, or \$150,000 for any unified school district. The dollar amount limit for each school district shall thereafter be increased annually by the percentage increase in the school district's local control funding formula allocation established pursuant to Section 42238.02, as implemented pursuant to Section 42238.03. The RCF may be discontinued by governing board resolution.

Purchase Limit: None, unless prescribed by the governing board.

Uses: Payments from the RCF shall only be for services or material which are a legal charge against the district, and for which a receipt is obtained setting forth the date, payee, purpose of the expenditure, and amount expended.

Reimbursement: At least monthly, the fund should be reimbursed by drawing a warrant on the General Fund payable to the Custodian (by name) of the Revolving Cash Fund; e.g., Penny Money, Custodian, Revolving Cash Fund, _____ School District. The RCF custodian should sign the reimbursement register.

EC §42810

RCF - Instructional Materials (EC §42810)

Establishment: The governing board may, by resolution, establish revolving cash funds for use by school principals and other administrative officials designated by the governing board and acting in accordance with regulations prescribed by the governing board for services or material. The resolution shall set forth the necessity for the revolving cash funds, the principals of schools and other administrative officials of the school district designated by the governing board, the purposes for which the revolving cash funds shall be made available, and the amount of the funds. The governing board may establish an account for the RCF in one or more banks, subject to such regulations for use as the governing board prescribes. The RCF shall be established by submitting to the county superintendent of schools an accounts payable (commercial) warrant payable to the principals and other administrative officials for whose use the RCF is created, accompanied by two certified copies of the board resolution. Upon approval, the county superintendent shall endorse his consent on the resolution and return one copy to the district.

The custodian of the RCF must be covered either by an individual bond not less than double the amount of the RCF or pursuant to Education Code §41021 by a name schedule bond, schedule position bond, or blanket bond.

Fund Limit: The total amount of the funds for each district shall not exceed 3% of the current year's instructional supply budget.

Reference

EC §42810	<p><u>Purchase Limit:</u> None, unless prescribed by the governing board.</p> <p><u>Uses:</u> Payments from the RCF shall only be for services or material related to classroom instruction, as well as the purposes specified in Education Code §45167 (payroll errors).</p> <p><u>Reimbursement:</u> At least monthly, the fund should be reimbursed by drawing a warrant on the General Fund payable to the Custodian (by name) of the Revolving Cash Fund; e.g. Joe Principal, Custodian, Revolving Cash Fund, _____ School District. <u>The RCF custodian should sign the reimbursement register.</u></p>
EC §42820	<p>RCF - Prepayment Fund (EC §42820)</p>
EC §42821	<p><u>Establishment:</u> The governing board may establish a revolving cash fund for the purposes of paying bills as prescribed in EC §42821.</p> <p><u>Fund Limit:</u> The maximum amount of the RCF is \$10,000 for school districts with 20,000 or more units of ADA, \$5,000 for school districts with 5,000 or more but less than 20,000 units of ADA, \$2,500 for school districts with 500 or more but less than 5,000 units of ADA, and \$1,000 for school districts with less than 500 units of ADA.</p> <p><u>Purchase Limit:</u> \$1,000 - Note: the check is to state on its face that it is not valid for more than \$1,000.</p>
EC §42821	<p><u>Uses:</u> For purchases in an amount of \$1,000 or less, including tax and freight, or at the time of preparing the order for those purchases to make the check payable to the vendor permitting him or her to fill in the amount to be paid upon shipment of the purchases.</p> <p><u>Reimbursement:</u> Upon approval of the expenditures by the governing board, the clerk of the governing board shall draw an order for the replenishment of the RCF. The reimbursement should be made payable to the Custodian (by name) of the Revolving Cash Fund; e.g., Penny Money, Custodian, Revolving Cash Fund, _____ School District. <u>The RCF custodian should sign the reimbursement register.</u></p>
EC 38091 amended (Cafeteria RCF)	<p>NOTE: Amendments to Education Code 38091 which became effective on January 1, 2014, eliminated the specific authorization for a Revolving Cash Fund out of the Cafeteria Fund. There is no longer authority for such a fund to be created.</p>
✓	<p><u>Minimum Documentation for Audit (ALL RCF's)</u></p> <ul style="list-style-type: none"> ◆ A current governing board resolution should be approved and on file with the County Office which authorizes establishment of the revolving cash fund, specifies the amount of the fund and indicates the individual RCF Custodian, by name. ◆ Warrant payable to the Custodian (by name) and not exceeding the revolving account amount. ◆ List of RCF payments (check register) approved by the governing board. List/Register should include: checks in sequential numerical order (including all voided checks), date of disbursement, payee, amount, and brief description of expenditure. <u>This should be approved and signed by the RCF Custodian.</u> <p>Note: It is not necessary to submit <u>all</u> itemized invoices and receipts at this time; however, documentation may be requested for individual disbursements after review of the list/register.</p>

Reference

TRAVEL & CONFERENCES

Admission Fees

Authority

CCR, Title 5,
§350

“A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”

EC §35330

The Education Code specifically authorizes certain fees. The authority to charge a fee for field trips or excursions is not directly stated in the Education Code. Rather, it provides that “No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds.” Accordingly, school districts may pay admission fees for their students.

✓

Minimum Documentation for Audit

- ◆ Invoice

Advance Payments (Travel)

Authority

EC §44032
EC §87032

The governing board of any school district or community college district shall provide for the payment of actual and necessary expenses, including travel expenses, of any employee of the district incurred in the course of performing services for the district, whether within or outside the district, under the direction of the governing board.

EC §35161
EC §87032

The board may authorize an advance of funds to cover such necessary expense. Direct payment by the district of advance registration fees or hotel deposits may be made. Such advance shall be repaid or adjusted upon filing of a regular claim for the actual and necessary expenses incurred.

If a governing board adopts a policy authorizing a travel advance to a board member or employee, the policy should limit the advance by establishing a per diem rate (exclusive of transportation) or by specifying an amount for each type of expenditure, such as meals, lodging, etc. Governing board policies and/or district administrative regulations should address procedures for travel advances, including the circumstances under which travel advances will be approved, the maximum amount, how far in advance the funds will be issued, and reconciliation procedures.

Note: Careful consideration should be given to compliance with Internal Revenue Service (IRS) regulations regarding travel advances and accounting for travel expenses, as some amounts may be required to be reported on the employee’s W-2.

Districts can obtain more information by reviewing IRS Publication 463, “Travel Entertainment, Gifts, and Car Expenses,” at: <https://www.irs.gov/pub/irs-pdf/p463.pdf> and IRS Publication 15-B, “Employer’s Tax Guide to Fringe Benefits” at: <https://www.irs.gov/pub/irs-pdf/p15b.pdf>

✓

Minimum Documentation for Audit

- ◆ Travel authorization document which includes name of employee, purpose and dates of travel, and estimated expenditures

Reference	
<p>EC §35330</p> <p><i>See Also: Transportation Students Page 56</i></p>	<ul style="list-style-type: none"> ◆ Approval of advance of funds by governing board or, if delegated, approval of responsible administrator <p>Field Trips and Special Activities</p> <p>Authority</p> <p>Governing boards and county superintendents of schools may conduct field trips or excursions in connection with the instructional program or school-related activities to and from places in the state, any other state, the District of Columbia, or a foreign county.</p> <p>In conducting field trips and excursions, governing boards or county superintendents may:</p> <ul style="list-style-type: none"> • Engage instructors or supervisors and provide equipment and supplies. • Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of pupils and instructors or supervisors to and from places in the state, any other state, the District of Columbia, or a foreign county where the field trip or excursion is conducted, provided that adequate liability insurance is secured. • Provide supervision of pupils by certificated employees of the district. <p>In conducting field trips and excursions, governing boards may NOT:</p> <ul style="list-style-type: none"> • Prevent any pupil from making the field trip or excursion because of lack of sufficient funds. • Authorize any group to take a field trip or excursion if any pupil who is a member of the group will be excluded from participation because of lack of sufficient funds. • Use school funds to pay the expenses of pupils participating in a field trip or excursion to another state, the District of Columbia, or a foreign country. School funds may be used for expenses of instructors, chaperones, and other personnel participating in the field trip or excursion and for “incidental expenses for the use of school district equipment.”
<p>EC §39860</p>	<p>The governing board of any school district may contract for the transportation of pupils attending schools within the district to and from any exposition or fair, school activities, or other activities which the governing board determines to be for the benefit of the pupils in this state, and may pay for the transportation out of any funds of the district available for the purpose.</p>
<p>✓</p>	<p><u>Minimum Documentation for Audit</u></p> <ul style="list-style-type: none"> • Invoices and itemized receipts
<p>EC §35160 EC §70902</p>	<p>Food / Beverage / Catering / Room Rentals (District Functions)</p> <p>Authority</p> <p>School districts and community college districts may expend reasonable sums of money to purchase food and beverages as refreshments for attendees at district-sponsored events which further the legitimate purposes of the district.</p> <p>A district could provide meals and refreshments at district-sponsored events for the purpose of encouraging attendance at those events and creating an overall favorable impression of the district and public schools.</p>

Reference

EC §32425

No school district, county board of education, or county superintendent of schools shall expend any public funds on the purchase of alcoholic beverages.

*See Also:
Part 4,
Exhibit 13*

Legal Counsel recommends that school districts adopt regulations which ensure that the expenditures for refreshments are made primarily for public education purposes and are reasonable in amount. The regulations should state the purposes of the expenditures, who may approve the expenditures and the maximum amounts to be expended. The specific nature of these limits is within the discretion of the governing board. When the policy or regulations are not clearly applicable, it is recommended that specific governing board approval be obtained. The following are examples of special events and activities, and types of expenditures for which governing board authorization, either by general policy or specific approval is recommended:

- Inservice Training
 - Employees and board members
 - District sponsored seminars and workshops
- Informal District Meetings
 - Staff meetings
 - Planning and operational meetings

In the conduct of such meetings, appropriate expenditures, such as speaker's fees, room rentals, meals and refreshments, excluding alcohol, may be authorized.

- Volunteer / Open House Functions
 - Luncheons
 - Dinners
 - Receptions

*See Also:
Part 3,
Awards,
Page 71*
✓

Examples of appropriate expenditures for these events are: room rentals, food, beverages, speaker's fees and decorations. The purchase of certificates, plaques, and trophies should comply with the governing board's policy and district regulations regarding awards.

Minimum Documentation for Audit

- ◆ Name, title, description or purpose of meeting
- ◆ Announcement or Agenda, if available
- ◆ Names of attendees
- ◆ Contracts, invoices and/or itemized receipts
- ◆ Governing board approval (or board policy and district regulation) upon request

Travel Expenses

Authority

Employees

EC §44032
EC §87032

The governing board of any school or community college district shall provide for the payment of the actual and necessary expenses, including traveling expenses, of any employee

Reference

of the district incurred in the course of performing services for the district, whether within or outside the district, under the direction of the governing board.

Note: Payment of expenses for spouses or guests would be a gift of public funds. Reimbursements shall be for employees only. It is recommended that expenses for a spouse or guest be made separately; however, if paid by district, the invoice must have district certification that the district has been reimbursed by the employee for all spouse/guest expenses and a copy of the reimbursement check kept on file.

EC §35172

Governing Board Members

The governing board of any school district may select a member or members of the board to attend meetings of any society, association, or organization for which the school district has subscribed to membership, or to any convention to which it may pay the expenses of any employee.

EC §45243

Personnel Commission

EC §88063

The governing board of any school district may select a member or members of the board to attend meetings of any society, association, or organization for which the school district has subscribed to membership, or to any convention to which it may pay the expenses of any employee.

EC §35044

Representatives of Governing Board

EC §72423

The governing board of each school district shall provide for the payment of the traveling expenses of any representatives of the board when performing services directed by the board. When the governing board directs persons other than employees or board members to travel, specific action must be taken by the governing board to authorize reimbursement of travel expenses.

Approval of a budget within an application for funds is not authorization to travel unless the board so stipulates.

Reference

*See Also:
 Part 3,
 Advance
 Payment,
 (Travel),
 Page 71*

EC §32435
 BPC §25608

✓

General Travel Policies

Governing board policies and administrative regulations should be established to address procedures for travel-related expenditures. This will provide a clear understanding of board intent to the persons authorized to travel and to staff responsible for the payment and audit processes. Issues to be considered include:

- Governing board delegation of authority to approve travel, including in-state, out-of-state, and foreign travel.
- Travel advances (including limitation in amount and/or timeframe).
- Limits on meals. Districts can handle meals in one of three ways:
 - 1) Per Diem allowance;
 - 2) Necessary and actual expenses, supported by receipts;
 - 3) Necessary and actual, not to exceed board approved maximums, supported by receipts. Meals included as part of conference registration should not be reimbursable as separate items.

Note: If the per diem rate established by the district exceeds the approved IRS per diem rate, the excess is reportable as taxable income on the individual's annual wage tax and wage statement (W-2). If the individual is a non-employee, the entire amount is reportable on a 1099-MISC form.

An overnight stay is required if meals are claimed; otherwise, the amount is reportable on the employee's W-2.

The use of public funds to purchase alcohol is prohibited.

- Time limits as to when individual meals may be claimed (i.e., travel begins before 6:00 a.m. and ends after 9:00 a.m. to be eligible for breakfast).
- Timeline for submitting reimbursement claim (i.e., no later than 30 days after travel concludes).
- Actual expenses for lodging to be supported by itemized hotel bill. If a spouse/guest is in attendance, the reimbursement should not exceed the rate for single occupancy lodging.
- Whether reimbursement for tips is permitted (other than for meals).
- Plane fare: airline tickets should be of least cost and are usually purchased directly by the district. Amount of airline is not to be included on the travel claim unless the employee purchased it.
- Ground travel: a district vehicle should be used when ground travel is the most efficient mode of travel. Car rental must be reasonable and have prior approval.
- Registration fees are authorized and generally are paid in advance by the district.
- Travel claims: whenever travel is properly authorized and costs are incurred, the employee should be required to prepare a claim which shows in detail all expenditures incurred. Invoices or proof of payment should also be provided and attached to the claim. The claimant should certify by signature that all amounts claimed were actual and necessary. Documentation should show the inclusive dates of each trip for which allowances are claimed and the times of departure and return. Time of departure and return means the time the employee started the trip, from office or home, and ended the trip, at office or home.

Minimum Documentation for Audit

- ◆ Current copy of district's board policy and administrative regulations regarding travel should be on file with the County Office of Education.

Reference

- ◆ Travel authorization and expense claim form indicating the employee/governing board member's name, purpose of the travel, method of transportation, estimated and actual expenses, leave and return times and dates, destination, and appropriate approval signatures. The authorization and claim form should be supported by:

- 1) Itemized receipts for hotel, car rental*, air fare,* train fare,* registration,* taxi/shuttle, car storage, parking, and meals (if required by board policy).

*If paid for by employee/governing board member.

- ◆ If the claim is for expenses of an informal meeting without an agenda, it should be so noted by an informal memo attached to the claim form.

Note: Authorization and expense claim forms should include the claimant's signature in addition to the individual(s) l delegated with the authority to approve the expenses. For example, the district superintendent's claim should be reviewed and approved by the chief business official or board president.

Note: The practice of including expenses for other district employees (i.e., one individual paying for several meals) on an individual claim is discouraged. If the claim includes expenses for other district employees for the same activity, travel claims for all participants should be submitted together.

Reference

EXHIBITS

BASIC ACCOUNTS PAYABLE PROCESS

The following are best practices for the Accounts Payable function.

Segregation of Duties

Segregation of Duties Matrix

				<div><div>Create Requisition</div><div>Approve Requisition</div><div>Create PO</div><div>Approve PO</div><div>Create Voucher</div><div>Approve Voucher</div><div>Cut Check</div><div>Add/Edit Vendor</div><div>Approve Vendor</div><div>Bank Reconciliation</div><div>Enter JE</div><div>Approve JE</div><div>Custody of Cash</div><div>Approval of Bank Dep</div><div>Post Receipts</div><div>Add/Edit Customers</div><div>TGRRCN (BANNER)</div><div>Hire Employee</div><div>Change Compensation</div><div>Change Benefits</div><div>Create Paycheck</div><div>ADP Recon</div></div>																					
Process	COSO	Procedure/Function	Grp	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Purchasing	R	Create Requisition	1		X		*		*	X	X	X	X		*										
	A	Approve Requisition	2	X			*		*		X	X	X	X	*										
	R	Create PO	3		*		X		*	X	X	X	X		*										
	A	Approve PO	4	*		X		*		X	X	X	X	*											
	R	Create Voucher	5		*		*		X	X	X	X	X		*										
	A	Approve Voucher	6	*		*		X		X	X	X	X	*											
	C	Cut Check	7	X	X	X	X	X	X		X	X	X	X	X										
	A	Add/Edit Vendor	8	X	X	X	X	X	X	X		X													
A	Approve Vendor	9	X	X	X	X	X	X	X	X															
Reconciliation	RX	Bank Reconciliation	10	X	X	X	X	X	X	X				*	X	X	X	X							X
Journal Entry	R	Enter JE	11		*		*	*	*	X			*		X	X	X	X							
	A	Approve JE	12	*		*		*		X			X	X		X	X	X							
Cash Receipts	C	Custody of Cash	13										X	X	X		X	X	X	X		X	X	X	
	A	Approval of Bank Deposit	14										X	X	X	X		X	X	X					
	R	Post Receipts	15										X	X	X	X	X		X	X					
	A	Add/Edit Customers	16													X	X	X		X					
	RX	TGRRCN (BANNER)	17													X	X	X	X						
Emp Comp	R	Hire Employee	17																			X	X	X	X
	A	Change Compensation	18													X					X			X	X
	A	Change Benefits	19													X					X				X
	C	Create Paycheck	20										X			X					X	X			X
	RX	ADP Recon	22																			X	X	X	X
				Purchasing								Recon	Journal Entry		Cash Receipts					Employee Comp					

COSO Category
R Record
A Authorize
C Custody
RX Reconcile

SOD Risk Level
X Elevated Risk
* Low Risk

Payment Verification

1. Match invoice to purchase order/contract and receiving documentation	Purchase orders/contracts, invoices and receiving documentation are received in the Accounts Payable office independently. Immediately upon receipt, relating documents should be matched.
2. Validate proper approval	Verify authorized signature on the receiving documentation. Special attention should be given to open or blanket purchase orders to ensure that original invoices with authorized signatures are provided.
3. Verify items received	Compare the purchase order, receiving documentation, and invoice to verify that all items billed have been received.

4. Verify price	Compare invoice prices with purchase order or contract and receiving documentation. According to district procedures, notify appropriate department of price or cost variations which exceed a certain percentage or specific dollar amount.
5. Math check invoice	Check the accuracy of the invoice totals.
6. Validate sales/use tax and withholding	Verify that the appropriate sales/use tax has been applied to the invoice and any withholding is processed.
7. Check for independent contractor status	Determine if the vendor is an independent contractor and flag for issuance of IRS Form 1099-MISC.
8. Confirm fund, program and object coding	Validate the fund, program and object code according to the items purchased and the purpose for which they were purchased.
9. Check line item budget for adequate funds	This step is crucial to effective budget management.
10. Calculate applicable discounts	If appropriate, calculate and apply discounts.
11. Disencumber funds	Funds are disencumbered according to the amount of the payment for partial payments. For purchase orders that are complete, the entire encumbered amount should be cleared. (Check Finalize line in PeopleSoft)
12. Process for payment	The payment is now ready for processing, board approval or ratification, County Office audit, and completion.
13. Cancel the invoice (This is best practice. Districts that have gone paperless should destroy/deface the original invoice after processing payment.)	A critical step in the process is canceling the invoice by marking it "paid." This will assist in preventing duplicate payment. Stapling a copy of the warrant to the invoice is not sufficient. The original invoice must be marked as "paid."
14. Note amount paid and items received for total or partial payment	The file copies of the purchase order must reflect amounts paid. Documentation is critical to efficient management of the Accounts Payable office.
15. Note progress payment and total spent to date on blanket purchase order	Open or blanket purchase orders require special attention. Each payment must be tracked against the original purchase order to ensure compliance with the purchase order limits.

Exceptions

Documents missing	If either the purchase order/contract, invoice, or receiving documentation is missing, the payment should not be processed. The Accounts Payable Technician researches to locate the missing document. If the document cannot be found, a duplicate or memorandum may be certified by an authorized party; i.e., purchasing director for purchase orders, authorized receiver for receiving documents, and vendor for missing invoice.
No purchase order/contract issued/executed	When a purchase has been made and an invoice is received without prior purchase order/contract execution, the purchasing and/or accounting manager should be notified immediately.
Invoice exceeds encumbrance balance of purchase order/contract	Authorization to increase encumbrance should be requested from the originator of the purchase order/contract. (Limited to 10%)
Insufficient funds available in line item budget	If line item budgets are insufficient to process payments, the appropriate supervisor should be notified to assist in providing resolution.
Incorrect fund, program or object code	Review nature of purchase and fund, program and object code. If account coding is incorrect, the appropriate budget or accounting manager should be notified.
Price does not agree with purchase order/contract	If the price does not agree with the purchase order/contract and no prior written authorization has been received to increase the price, the purchasing manager should be notified. The payment is held until there is a resolution.
Math errors	Math errors on the invoice are corrected and clearly noted on the vendor and district invoice copies. The correct amount is paid. May also request that vendor issue a corrected invoice.
Sales tax not correct/Use tax not charged	Sales tax errors are corrected and clearly noted on the vendor and district invoice copies. The correct amount is paid or accrued.
Noncompliance with contract terms	If the invoice is not in compliance with purchase order/contract terms, the purchasing manager is notified and payment withheld pending resolution.
Items not received	Partial payment may be issued pending receipt of entire order when the balance of the contract is fulfilled.
Incorrect items received	The purchasing manager is notified when incorrect items are noted on the receiving documentation. Payment is withheld until the conflict is resolved and the Accounts Payable staff is notified.
Damaged goods received	Payment is postponed until the damaged goods are replaced.

Invoice Tracking

Tracking of unpaid invoices	Accounts Payable procedures should include a manual or automated tracking of unpaid invoices. This practice is commonly called “aging” of Accounts Payable. Invoices over sixty (60) days old are identified for special attention.
Research unpaid invoices	Invoices over sixty (60) days old should be researched. The reason for non-payment is most likely one of the exceptions noted above. Regular action to resolve unpaid invoices is a critical task of the Accounts Payable Technician.
Unresolved invoices	If the problem with the unresolved invoices cannot be resolved by the Accounts Payable Technician, the invoice and all supporting documentation with a request for direction should be forwarded to the appropriate district manager.

Purchase Order and Encumbrances Tracking

Review outstanding purchase orders and encumbrances	Outstanding purchase orders and encumbrances should be reviewed regularly, researching those outstanding over 60 days to determine status.
Refer questions	Questionable outstanding purchase orders and encumbrances should be forwarded to the purchasing and/or accounting department for further research.

AFFIDAVIT TO OBTAIN DUPLICATE OF LOST OR DESTROYED WARRANT

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } ss.

_____; being duly sworn, says:

That he/she is the said legal owner of that certain county warrant numbered ____ - _____,
dated ____ / ____ / 20____, and drawn by the county auditor of the County of Santa Barbara, on the
_____ School District Fund (fund number ____) of said County, in favor
of _____ as payee thereof, for
_____ dollars (\$_____);

That said warrant has not been paid but was lost/destroyed before the same was paid by the county
treasurer of said County of Santa Barbara and cannot now be produced by the said legal owner. That
the circumstances of such loss and all material facts relative thereto, are as follows:

I understand that if I receive the above warrant I agree not to cash the warrant but instead to return the
said warrant to the district.

Signature of Payee

Date signed

Printed name of Payee

Phone number of Payee

District Authorized Contact

District phone number

AFFIDAVIT TO OBTAIN DUPLICATE OF STOLEN WARRANT

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } ss.

_____ ; being duly sworn, says:

That he/she is the said legal owner of that certain county warrant numbered ____ - _____,
dated ____ / ____ / 20 ____, and drawn by the county auditor of the County of Santa Barbara, on the
_____ School District Fund (fund number ____) of said County, in favor
of _____ as payee thereof, for
_____ dollars (\$ _____);

That said warrant has not been paid but was stolen before the same was paid by the county treasurer of
said County of Santa Barbara and cannot now be produced by the said legal owner. That the
circumstances of such loss and all material facts relative thereto, are as follows:

|

In payee's own handwriting write: "I viewed the warrant and I swear the signature to be a forgery"

I understand that I will be required to complete a notarized Bank of America affidavit.

Signature of Payee

Date signed

Printed name of Payee

Phone number of Payee

District Authorized Contact

District phone number

PAGE ONE OF 2 PAGES

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: PROJECT: APPLICATION #: Distribution to:

FROM CONTRACTOR: VIA ARCHITECT: CONTRACT DATE: CONTRACTOR: OWNER

Const Mgr

Architect

Contractor

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM \$

2. Net change by Change Orders \$

3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$

4. TOTAL COMPLETED & STORED TO DATE \$

(Column G on Continuation Sheet)

5. RETAINAGE:

a. 5.0% of Completed Work \$

(Columns D+E on Continuation Sheet)

b. 10.0% of Stored Material \$

(Column F on Continuation Sheet)

Total Retainage (Line 5a + 5b or Total in Column 1 of Continuation Sheet) \$

6. TOTAL EARNED LESS RETAINAGE \$

(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$

(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$

9. BALANCE TO FINISH, INCLUDING RETAINAGE \$

(Line 3 less Line 6)

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: BY: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPLICATION AND CERTIFICATE FOR PAYMENT

PROJECT NAME: _____

CONTRACTOR'S PROJECT NO.: _____

APPLICATION NUMBER: _____

APPLICATION DATE: _____

PERIOD FROM: _____

TO: _____

CONTINUATION SHEET FOR AIA DOCUMENT G702 PAGE 2 OF 2

ITEM NO.	DESCRIPTION OF WORK	ORIGINAL VALUE	REVISED VALUE	PREVIOUS APPLICATIONS	WORK IN PLACE THIS MONTH	STORED MATERIAL	TOTAL DATE	PERCENT COMPLETE	BALANCE TO FINISH	RETAINAGE
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May 2019

BID LIMITS

Component (Definition)	Bid Limits as of 1/1/2019
EQUIPMENT, MATERIALS, SUPPLIES <u>20111(a)(1); 20651(a)(1)</u> Exceptions: Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks or periodicals. (PCC 20118.3) Perishable foodstuffs and seasonal commodities. (PCC 20660; Ed Code 38083) Surplus federal property. (Ed. Code 17602) Energy service and conservation contracts (Gov. Code 4217.12, 15814.10 et seq.) Purchase through other public agency (Ed. Code 17595; PCC 20118, 20652, 20653) Emergency repair contracts. (PCC 20113, 20654)	\$92,600
NON-CONSTRUCTION SERVICES <u>20111(a)(2); 20651(a)(2)</u> Exception: Special services and advice under Government Code section 53060. Includes: financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.	\$92,600
MAINTENANCE <u>20111(3)(2); 20651(a)(3)</u> 20656 Routine, recurring and usual work for the preservation or protection of any publicly owned, publicly operated facility for its intended purpose. Includes minor and routine repairs, landscape, and minor repainting.	\$92,600
PUBLIC PROJECT WORK <u>20117 (b); 20651(b)</u> Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and any repair work involving publicly owned, leased, or operated facilities.	\$15,000 Labor & Materials
FORCE ACCOUNT OR DAY LABOR <u>20114(a); 20655(a)</u> Work performed by the agency's day labor on any type of public project or maintenance work. Day labor includes the use of maintenance personnel employed on a permanent or temporary basis.	350 hours <\$35,000 ADA 750 hours or \$21,000 if >\$35,000 ADA or >15,000 FTE for Comm. College
CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT <u>22032(a)(b)(c)</u> Performed by employees, purchase order, or negotiated contract: Let by informal bid: (if all bids exceed \$175,000, may award up to \$187,500) Formal Bid:	\$45,000 or less \$45,001 to \$175,000 >\$175,000
TRANSPORTATION AGREEMENTS Education Code 39802 Transportation contracts must be bid when the total expenditure exceeds \$10,000 and the services are provided by a person or corporation other than a common carrier or a municipally owned transit system or a parent or guardian of the pupils to be transported. The governing board may let the contract for the service to other than the lowest bidder. Ed. Code, § 39802. 32	\$10,000
TIME LIMITS ON CONTINUING CONTRACTS: (Education Code section 17596) Work, services, apparatus or equipment: Materials or supplies: Equipment Lease:	5 Years 3 Years 10 Years



Santa Barbara County Education Office

4400 Cathedral Oaks Rd, PO Box 6307, Santa Barbara, CA 93160-6307
Telephone: (805) 964-4711 • FAX: (805) 964-4712 • sbceo.org


Susan C. Salcido, Superintendent of Schools

February 9, 2018

SBAS-9086

TO: K-12 School Districts
Community Colleges
Santa Barbara County SELPA
County Education Office — Internal Services

ATTENTION: Chief Business Officials
Accounts Payable Departments
Purchasing Departments

FROM: Todd Humphreys, Financial Systems Supervisor 

SUBJECT: **Emergency Resolutions - 2018**

When an emergency exists in your district, your governing board may enter into a contract without bidding and advertising as required by law even though the contract exceeds the bid thresholds of \$15,000 for a public project or \$90,200 for purchases, services, and repairs for calendar year 2018. This may be done only if specific criteria are met.

Adoption of an emergency resolution by your governing board **and** approval by the county superintendent of schools is required pursuant to Public Contract Code §20113 for K-12 districts or §20654 for community colleges.

The emergency provision only provides relief from bidding and advertising and not from obtaining the written contract, necessary bonds, certificates of insurance, change orders or any other required documentation or procedures.

Attached are emergency resolution guidelines, an emergency resolution template, and sample emergency resolutions.

If you have any questions, please call me at extension 5372.

ad
attachments

____ School Business Advisory Services _____

FAX: (805) 964-3041

Emergency Resolutions
February 9, 2018
SBAS-9086
Page 2

Emergency Resolution Guidelines

1. There must be an emergency. An emergency exists when any repairs, alterations, work, or improvement is necessary to permit the continuance of existing school classes, or to avoid danger to life or property pursuant to Public Contract Code §20113 for K-12 districts or §20654 for community colleges.
2. A school or community college district board may declare an emergency by unanimous vote and pass an emergency resolution to award a contract without advertising for bids. The county superintendent must *also* approve this resolution.
3. When preparing your resolution, provide a thorough description of the emergency and circumstances surrounding it. State why the standard bidding process cannot be utilized. Do not assume what seems obvious to you as an emergency is obvious to a vendor who feels they should have been given an opportunity to bid on work done or purchases made. Ask yourself if a reasonable person would agree that there is an emergency. Cite in your resolution at least one of the reasons listed under Public Contract Code §20113 or §20654.

Consider the following issues and respond to the applicable items within the resolution. Be sure to include supporting documentation for your board. The items listed below are not meant to be all inclusive:

- What is the emergency? Describe in detail what happened, when, and where.
- Why is this an emergency? Explain the consequences if your district does not immediately make the repairs or purchase.
- Is there danger to life or property?
- Are there immediate safety or health issues for staff and students?
- Is there a financial impact to your district? Can school begin or continue? Would there be a loss of ADA?
- Are there available classrooms to move students into while waiting to go through the standard bid process and/or while work is being done?
- Is timing critical? Explain the consequences if you went through the standard bid process instead of using the emergency provision. State how many weeks it will take to go through the bid process and the time needed to complete the repairs.

Emergency Resolutions
February 9, 2018
SBAS-9086
Page 3

4. In the past, our office has received late notification and emergency resolution language that is too vague. Please notify School Business Advisory Services as soon as possible after the emergency and fax or email a copy of the draft resolution that you plan to present to the board.
5. Our staff will review your resolution for completeness and assist you with any changes or additions needed to clearly document the specific facts surrounding your district's emergency under Public Contract Code §20113 or §20654. This will expedite processing by the county superintendent.
6. After your board passes the emergency resolution, send the original copy to our office for the county superintendent's approval. We will forward the resolution for review and notify you if it is approved.

~~ Emergency Resolution Template ~~

Award of Contract without Bidding and Advertising

District

The governing board, at a meeting held _____, pursuant to Public Contract Code §20113 for K-12 districts or §20654 for community colleges, unanimously resolved by vote of all members present, and constituting a quorum, that an emergency exists, per Public Contract Code §1102, wherein a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services:

The board, therefore, declares an emergency and with approval of the county superintendent of schools authorizes the district business manager to enter into a contract that may include additional work required by local and state agencies.

The estimated cost to resolve this emergency is expected to exceed \$15,000. This resolution does not set aside any bonding or security otherwise required by law.

Passed and adopted _____, _____ by the following vote: Ayes _____ Noes _____ Absent _____

Certification of the Secretary/Clerk of the Board

Approved by the County Superintendent of Schools

Signature

Signature

Date

Date

~~ *EXAMPLE* ~~

Emergency Resolution
Award of Contract without Bidding and Advertising

Oak Valley Union High School District

The governing board, at a meeting held February 28, 2016, pursuant to the Public Contract Code §20113 unanimously resolved, by vote of members present, and constituting a quorum, that an emergency exists wherein certain repairs, alterations, work, or improvements are necessary to permit the continuation of existing school classes, or to avoid danger to life or property, as described in detail below:

On February 23, 2016, a severe rain and windstorm swept over the community causing significant damage to district's facility. Ten buildings sustained substantial roof damage and required emergency, temporary repair. The temporary repair measures are not adequate and we must take immediate action to prevent further damage to avoid danger to life and property. The damaged roofs have allowed water into classrooms rendering them unusable and unsafe for staff and students. There is falling debris from the damaged roofs and ceilings and it is not safe to use the specialty electronic equipment housed in the classrooms. The computer, photography, and driver education classrooms are very specific in use and duplicate equipment and network connections cannot be provided elsewhere on campus; no other classrooms are available. In order to continue classes and to avoid danger to staff and students, it is essential to begin work immediately to repair damaged roofs, ceilings, walls, and electrical lighting fixtures.

The board, therefore, with the approval of the county superintendent, declares an emergency and authorizes the district business manager to enter into a contract for repairs and any other work local and state agencies may require to avoid danger to life and property and to permit the continuation of existing school classes.

The estimated cost is expected to exceed \$15,000. This resolution does not set aside any bonding or security otherwise required by law.

Passed and adopted February 28, 2016, by the following vote: Ayes 6, Noes 0, Absent 0.

Certification of the Secretary/Clerk of the Board

Approved by the County Superintendent of Schools

Signature

Signature

Date

Date

~~ *EXAMPLE* ~~

Emergency Resolution
Award of Contract without Bidding and Advertising

Pacific Coast Community College District

The governing board, at a meeting held July 6, 2016, pursuant to the Public Contract Code §20654 unanimously resolved, by vote of members present, and constituting a quorum, that an emergency exists wherein certain repairs, alterations, work, or improvements are necessary to permit the continuation of existing school classes, or to avoid danger to life or property, as described in detail below:

The Science Building air conditioning unit has ceased working. Estimates to repair the unit are higher than replacement costs. All rooms, including classrooms, in the building rely solely on the air conditioning unit for ventilation and circulation. Some of the classrooms do not have windows or have sealed windows that cannot be opened. Lack of adequate ventilation will cause a safety issue for staff and students as temperatures within the building will exceed 100 degrees in the upcoming weeks. Because the science classrooms are specific in use and due to the lack of other available classrooms in which to move the students, the air conditioning unit must be replaced in order for classes to continue without interruption during summer session. Following the standard bid process will seriously impact the district's ability to conduct summer school classes in Science Building would mean that the air conditioning unit would not be installed until late summer. The bid process takes at least 3-4 weeks to advertise and award a contract, plus the additional time of six or more weeks for a vendor to deliver and install the air conditioning unit.

The board, therefore declares an emergency and with the approval of the county superintendent of schools authorizes the district business manager to enter into a contract to replace the air conditioning unit and all work required by local and state agencies to avoid an unsafe respiratory environment and to permit the continuation of classes.

This resolution does not set aside any bonding or security otherwise required by law. The estimated cost is expected to exceed \$15,000.

Passed and adopted July 6, 2016 by the following vote: Ayes 6, Noes 0, Absent 0.

Certification of the Secretary/Clerk of the Board

Approved by the County Superintendent of Schools

Signature

Signature

Date

Date



Santa Barbara County Education Office

4400 Cathedral Oaks Rd, PO Box 6307, Santa Barbara, CA 93160-6307

Telephone: (805) 964-4711 • FAX: (805) 964-4712 • sbceo.org

Susan C. Salcido, Superintendent of Schools

February 14, 2019

SBAS-9225

TO: K-12 School Districts
Community Colleges
Santa Barbara County SELPA
County Education Office - Internal Services

ATTENTION: Chief Business Officials
Accounts Payable Departments
Purchasing Departments

FROM: Todd Humphreys, Financial Systems Supervisor

SUBJECT: **Cooperative Purchasing - 2019**

Cooperative purchasing (formerly “piggybacking”) applies when one district purchases property using a contract that has been awarded to a vendor by another district. County Counsel opinion authorizes districts to utilize this type of purchasing provided that they comply with the following conditions:

- Ensure that the originating district has complied with all of the competitive bidding requirements before the purchase is made. We recommend that you thoroughly inspect the originating district’s bidding process for compliance, or engage legal counsel to do so, in order to gain confidence in the legality of the originating district’s bid process.
- The originating district’s bid documentation and approved contract must contain language such as “other school and community college districts located in [California or designated counties] may request to purchase identical items at the same prices and upon the same terms and conditions.”
- Upon receipt of the property, verify that it meets the specifications set forth in the original contract.
- When paying for the property, you may either draw a warrant in favor of the originating district *or* make the payment directly to the vendor depending on the arrangements made.

For additional information and minimum audit documentation required for cooperative purchasing please refer to the **Commercial Warrant Claims Manual** located on the SBCEO Website at: <http://sbas.sbceo.org/manuals-reports/index.shtml>

If you have any questions, please contact me at ext. 5372.

School Business Advisory Services

FAX: (805) 964-3041



School Business Advisory Services

Commercial Warrant Audit Desk Piggyback Purchasing Payment Documentation Checklist

School District:	Date:
Name of Vendor:	Vendor #:
Name of Original Contracting District:	

This checklist is to be used to verify that all required documentation has been submitted to the School Business Advisory Services (SBAS) commercial warrant audit desk for any contract executed using a piggyback bid from another school district.

All items must be checked off and the form signed by the Financial Services Manager and SBAS Administrator before payment on the contract can be released to the district or vendor.

Documentation of piggybacked contract

Districts may utilize the piggyback provision for purchases of material or supplies over the \$90,200 bid limit for 2018, under Public Contract Code sections 20118 and 20652. There is no authority for piggybacking public projects.

District must submit the following documentation:

1. Piggyback bid document with price list from the original contracting agency/district. _____
2. Original Contract Terms: The awarding agency/district's written contract documents that include language to permit other school districts to participate in the purchase of specified property on a per unit basis. _____
3. Excerpt from the governing board minutes of the original awarding school district to verify the contract as valid and in compliance with all legal requirements. _____
4. Copy of purchasing districts governing board minutes documenting approval to use the piggyback bid. _____

5. Copy of a separate contract between the district utilizing the piggyback bid and the vendor under the same terms and conditions, including pricing, as the awarding district's contract. _____

6. Vendor invoice for payment due with detailed charges. _____

All of the listed documents have been submitted and inspected before the payment on the contract has been released to the district.

Commercial Warrant Audit Technician Signature	Date

I have reviewed the above checklist of documents and authorize the release of payment to the district or vendor.

Financial Services Manager Signature	Date
SBAS Administrator Signature	Date

**SYNOPSIS OF
 UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (UPCCAA)
 ALTERNATIVE BIDDING PROCEDURES FOR PUBLIC PROJECTS**

Definition of PUBLIC PROJECT WORK: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and any repair work involving publicly owned, leased, or operated facilities [Public Contract Code §20111(b), 20651(b)]

Definition of MAINTENANCE: Routine, recurring and usual work for the preservation or protection of any publicly owned, publicly operated facility for its intended purpose. Includes *minor and routine* repairs, landscaping and *minor* repainting. [Public Contract Code §20111(a)(3), §20651(a)(3), §20656]

Definition of FORCE ACCOUNT/DAY LABOR: Work performed by the agency's day labor on any type of public project or maintenance work. Day labor includes the use of maintenance personnel employed on a permanent or temporary basis. [Public Contract Code §20114(a), 20655(a)]

Bid Limits Under Public Contract Code		Bid Limits Under UPCCAA	
Public Projects =	\$15,000 labor and materials	Informal Bids =	\$45,000-\$175,000
Maintenance =	\$92,600	Formal Bids =	\$175,000+
Force Account =	<35,000 ADA = 350 hours >35,000 ADA = 750 hours OR \$21,000 materials	Maintenance =	Must opt in to use CUPCCAA limits
		Force Account =	<35,000 ADA = \$45,000 >35,000 ADA = \$45,000

Implementation Requirements (per Public Contract Code §22000 et seq.) *PARTIAL LIST ONLY*

- ♦ Governing board must elect by resolution to become subject to the UPCCAA procedures
- ♦ District must notify the State Controller in writing of the election to become subject to the UPCCAA
- ♦ The entire district becomes subject to the UPCCAA
- ♦ Must adopt informal bidding policy/regulation
- ♦ During November each year, the district may mail a written notice to all construction trade journals as designated under Public Contract Code §21206 inviting all licensed contractors to submit their name for inclusion on the district's list of qualified bidders for the following calendar year
- ♦ District must comply with accounting procedures if using Force Account Labor
- ♦ Both conventional Public Contract Code laws and those added under the UPCCAA require estimated costs of each project be documented to determine if bid thresholds have been met
- ♦ Other requirements still apply; i.e., payment and performance bonds, prevailing wage, DIR registration, etc.
- ♦ Regulations and procedures for the UPCCAA are maintained and monitored by the California Uniform Construction Cost Accounting Commission (CUCCAC), State Controller's Office. Contact: Guiselle Carreon, Commissioner at 858-292-3602. Manual is available from website: http://sco.ca.gov/ard_cuccac.html

[Insert District name, address, phone and fax number]

**PUBLIC WORKS CONTRACT FOR SERVICES UNDER THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION
COST ACCOUNTING ACT
(Not to Exceed \$15,000/\$45,000)**

THIS CONTRACT made and entered into on _____, _____ by and between
_____, hereinafter called the CONTRACTOR and the [Insert District name], hereinafter called the DISTRICT.

WITNESSETH; The parties do hereby contract and agree as follows:

1. The CONTRACTOR shall furnish labor and materials to the DISTRICT in accordance with the Terms & Conditions set forth in Attachment B hereof and incorporated herein by this reference and any specifications attached for a total contract price of:

_____ Dollars (\$_____)
(MAY NOT EXCEED \$45,000) to be paid in full within thirty (30) days after completion and acceptance
2. Contractor shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following classification: _____. This contract shall commence on _____ with work to be completed within _____ (____) consecutive days and/or by _____.
3. Contractor shall be registered with the Department of Industrial Relations pursuant to Labor Code 1725.5 (Attachment B) when public project exceeds \$25,000 or a maintenance project exceeds \$15,000.
4. **SCOPE OF WORK:** By submitting a proposal, contractors warrant that they have made a site examination as they deem necessary as to the condition of the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. Proposals are subject to acceptance by the signing of a contract and issuance of an appropriate purchase order. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality in any quote. **CONTRACTOR PROPOSES TO FURNISH LABOR AND MATERIAL IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:** Describe in detail the scope of the proposed project and materials to be furnished. Attach additional sheets if necessary and reference "see attachment" in space provided below. NOTE: this contract, in conjunction with the terms and conditions in Attachments A - C take precedence over any Contractor supplied attachments.

SCOPE OF WORK

Prevailing Wages Apply

Note: If contract exceeds \$25,000, per Civil Code Section 3247, Contract shall provide a Payment Bond.

Page 1 of 12

NONCOLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

The undersigned declares: I am the _____ of _____, the party making the foregoing proposal. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or to refrain from proposing. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20____, at _____, California.

By: _____

Name: _____

SCHOOL SAFETY ACT – COMMUNICATIONS WITH PUPILS

_____ In accordance with Education Code Section 45125.1, the District has determined that fingerprinting and certification will be required of the employees of the contractor who provide services under this contract (please complete certification form, Attachment A).

_____ In accordance with Education Code Section 45125.2, the District has determined that an exemption exists under requirements of 45125.1, and that workers may have other than limited contact with students. Therefore, the Contractor is required to provide or agree to one or more of the following: (to be determined by District)

- _____ Installation of physical barrier at the work site to limit contact with pupils.
- _____ Surveillance of employees of the Contractor by school personnel.
- _____ Continual supervision and monitoring of all employees of the Contractor by an employee of the Contractor whom the DOJ has ascertained has not been convicted of a violent or serious felony.

Supervisor's Name: _____

Soc. Sec. No. (last 4 digits or full CDL #) _____

_____ In accordance with Education Code Section 45125.1, subdivision c, the District has determined that this contract is not subject to Education Code Section 45125.1 (a), because the contractor's employees, including the employees of any subcontractor, will have only "limited contact" with pupils on the site. Justifications is as follows:

- _____ Work will be performed on a day or days when school is not in session (holidays, weekend or non-teaching days – may not include after school hours).
- _____ Other, describe _____.

Signature: _____ Title: _____ Date: _____
Signature of District Official responsible for assuring selected conditions are met in accordance with Education Code Section 45125.2, if applicable.

Contractor understands that District department staff may monitor and evaluate adherence to these conditions during the performance of their work.

IN WITNESS WHEREOF, the parties hereunto have subscribed to this Contract, including all Contract Documents as listed below:

- | | |
|---|---|
| _____ Work Specs/Scope of Work Statement | _____ Non-Collusive Declaration |
| _____ Certificates of Insurance | _____ Workers' Compensation Certificate |
| _____ Contractor Certification Form, Attachment A | _____ Terms and Conditions dated _____ Attachment C |
| _____ Purchase Order No. _____ | |

NOTE: Federal Regulations (26 CFR 1.6041) requires non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security Number, whichever is applicable. The District requires a valid copy of a W-9 to be supplied upon request.

TYPE OF BUSINESS ENTITY

- _____ Individual
- _____ Sole Proprietorship
- _____ Partnership
- _____ Corporation
- _____ Other

TAX IDENTIFICATION

Employer Identification Number

Social Security Number

License No: _____ Classification: _____ Expiration Date: _____

DIR Registration No. _____

I hereby agree to abide by these terms and conditions if awarded the project as described herein. Under penalty of perjury I certify that I am a duly authorized agent/representative of the company providing this proposal. I also certify that none of the individuals identified on attached certification form (if applicable) or any individual identified above as been convicted of a felony as defined in Education Code 45122.1

All notices permitted or required under this contract shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

Date: _____

Company Name: _____

Address: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Phone: _____ Fax: _____

Email Address: _____

Accepted by: _____
Signature of District Representative

Printed Name: _____

Title: _____

Date: _____

Address: _____

ATTACHMENT A – CONTRACTOR CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE SECTION 45125.1

The District has determined under Education Code Section 45125.1, subdivision (c), that in performing services to this contract, Contractor's employees may have contact with pupils. As required under Education Code Section 45125.1, subdivision (a), Contractor shall require their employees, including the employees of any subcontractor, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

Contractor shall not permit any employee to perform services who may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has not criminal charges pending for a felony as defined in Section 45122.1.

Contractor shall certify in writing to the District that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1.

Contractor shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Contractor's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Contractor for using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

It is understood that by signing this document Contractor agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of contractor who may come in contact with pupils in the performance of services in this contract.

Name

Social Security No.

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Dated: _____ (Company)

_____(Signature) _____(Title)

(Complete only if pertinent)

**ATTACHMENT B
CERTIFICATION OF CONTRACTOR AND
SUBCONTRACTOR DIVISION OF INDUSTRIAL RELATIONS REGISTRATION**

Pursuant to Labor Code Section 1725.5, a contractor or subcontractor must be registered with the Department of Industrial relations in order to bid on, to be listed in a bid proposal or to engage in the performance of any defined public work contract.

I _____, _____ certify that
(Name) (Title)

_____ is currently registered as a contractor with the Department of Industrial
(Contractor Name)

Relations (DIR):

Contractor's DIR Registration Number _____

Expiration date June 30, 20__

Contract further acknowledges:

1. Contractor shall maintain DIR registered status for the duration of the project without a gap in registration.
2. Contractor shall note in its invitation to bid the DIR's registration requirement for all subcontractors and their subcontractors.
3. Contractor shall ensure that all subcontractors are registered at time of bid opening and maintain registered status for the duration of the project.
4. Contractor is to furnish DIR Registration Number for all subcontractors on the project within 24 hours of the bid opening.
5. Contractor shall substitute any subcontractor with a DIR registered contractor if listed subcontractor is unable to perform the work.

Failure to comply with any of the above may result in a determination of non-responsiveness.

I declare under penalty of perjury under California law that the foregoing is true and correct.

Signature

Date

ATTACHMENT C
TERMS AND CONDITIONS DATED

ARTICLE 1. PROPOSAL ACCEPTANCE: Proposals are subject to acceptance by the signing of a contract and issuance of an appropriate purchase order at any time within sixty (60) days after the receipt of quotes unless otherwise stipulated. The District reserves the right to accept or reject any and all quotes and reserves the right to waive any informality in any quote.

ARTICLE 2. SITE EXAMINATION: Contractor must examine the site and certify all measurements, specifications and conditions affecting the work to be performed at the site. By submitting their quote a contractor warrants that it has made such site examination as it deems necessary as to the condition of the site, its accessibility for materials, workmen and utilities, and ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to such matters or for any other undiscovered conditions on the site.

ARTICLE 3. EQUIPMENT AND LABOR: The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized district representative indicated in the work specifications attached hereto.

ARTICLE 4. SUBCONTRACTING: Contractor agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this contract, Contractor shall be fully responsible to the District for acts and omissions of his subcontractor and of persons either directly or indirectly employed by himself. Nothing contained in the contract documents shall create any contractual relations between any subcontractor and the District.

No contractor or subcontractor may be listed on a proposal or be awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 when a public project exceeds \$25,000 or a maintenance project exceeds \$15,000 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

ARTICLE 5. ASSIGNMENT: Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations under this contract without the prior written consent of District.

ARTICLE 6. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE: The Contractor shall not commence work under this Contract until it has obtained the insurance required under this paragraph and satisfactory proof of such insurance has been submitted to District and said insurance has been approved by the District Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than \$1,000,000 per occurrence (combined single limit) and \$2,000,000 Project Specific Aggregate (for this Project only). Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's Board of Trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, the architect, and the architect's consultants, if applicable, individually and collectively as additional insured.

The limits set forth above shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit contractor's indemnification obligations to District, and shall not preclude the District from taking such other actions available to District under other provisions of the contract documents or law.

Contractor and any subcontractor shall not commence work nor shall Contractor allow any subcontractor to commence work under this contract until all required insurance certificates have been delivered

to and approved by District. Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the District's prior written consent, and, the District shall be named as an additional insured and be furnished thirty (30) days written notice prior to cancellation. The Contractor shall not allow any subcontractor, employee or agent to commence work on this contract or any subcontract until the insurance required of the Contractor, subcontractor, or agent has been obtained.

a) **WORKER'S COMPENSATION INSURANCE:** The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance on all its employees engaged in work under this contract, or at the site of the Project, and if the work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for subcontractor's employees. Any class of employee or employees not covered by subcontractor's insurance shall be covered by the Contractor's insurance. The Contractor shall provide to the District a Certificate Regarding workers' Compensation available from the District prior to performing the work of the contract.

ARTICLE 7. LABOR CODE COMPLIANCE: This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The Contractor hereby stipulates that it shall comply with the applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5 ("Public Works Labor Code Provisions"), including, but not limited to, the payment of the general prevailing rates for public works projects of more than One Thousand Dollars (\$1,000) (§1771), hiring of Apprentices (§ 1777.5) and Working Hours (§ 1813), and Payroll Records (§ 1776). Prevailing rate of per diem wages are on the website of the Division of Labor Statistics and Research of the Department of Industrial Relations at www.dir.ca.gov/OPRL/. Contractor shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

Contractor or subcontractor shall, as a penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by Contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 of the Public Works Labor Code Provisions.

With regard to hiring of apprentices, the responsibility of compliance with Labor Code section 1777.5 shall rest with the Contractor. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, divisions 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification or type of worker needed to execute the contract. Said determinations are available to any interested party on the web site (www.dir.ca.gov/).

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified. Each worker of the Contractor or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers.

Each worker needed to execute the work on the project shall be paid travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1173.8.

The Contractor shall, as a penalty to the District, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or by any subcontractor under him. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor, and the Contractor shall be bound by the provisions of Labor Code section 1775.

Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and similar purposes. Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him in connection with the public work.

The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- b) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c) A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Contractor.

Contractor shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request. Any copies of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor shall not be marked or obliterated.

Contractor shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

In the event of noncompliance with the requirements of this article regarding maintenance of records, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this article. Should noncompliance still be evident after such ten-day period, the Contractor shall, as a penalty by the District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due.

ARTICLE 8. APPRENTICES: Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to the Contract in full compliance with provisions of the Labor Code. The prime contractor shall bear the responsibility of compliance with Labor Code section 1777.5 for all apprenticeable occupations and agrees that he will comply with said section which reads: "Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered."

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070), of Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the District, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contact award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate date the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The Contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in the section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not proposing work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand (\$30,000) or 20 working days. This section shall not use any work performed by a journeyman in excess of eight hours per day or 40 hours per week to calculate the hourly ratio.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met: a) Unemployment for the previous three-month period in such area exceeds an average of 15 percent. b) The number of apprentices in training in such area exceeds a ratio of 1-to-5. c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis. d) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life, or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him who, employs journeymen or apprentices in any apprenticeable craft or trade to perform work under the contract and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or

upon the same basis and in the same manner as the other contractors do. Where the trust fund administrators are unable to accept the fund, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. This contractor or subcontractor may add the amount of the contributions in computing his proposal for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code Section 227.

The District awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor. All decisions of the joint apprenticeship committee under this section are subject to Labor Code Section 3081.

ARTICLE 9. WORK HOURS: As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

The Contractor and every subcontractor shall keep accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District

ARTICLE 10. INDEMNIFICATION: District shall not be liable for, and Contractor shall defend, indemnify, and hold harmless the District, its officials, employees, agents and volunteers, against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages or injury, in law or equity to property or persons, including wrongful death, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the Project or this contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants, volunteers or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees. Contractor shall reimburse District and its directors, officials, officers, employees, agents and volunteers, for any and all

legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

ARTICLE 11. MATERIALS: Contractor warrants good title to all material, supplies and equipment installed or including in the work. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

ARTICLE 12. PATENTS, ROYALTIES AND INDEMNITIES: The Contractor shall hold and save the District and its officers, agents and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents.

ARTICLE 13. GUARANTEE: Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

This article does not in any way limit the guarantee of any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon completion of the project.

ARTICLE 14. PROTECTION OF WORK AND PROPERTY: The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, light and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of the organization on the work, whose duty shall be prevention of accidents. Contractor shall report name and position of person so designated to District. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at its discretion to prevent the threatened loss or injury. It shall be the responsibility of the Contractor to ascertain from the District the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present.

ARTICLE 15. DISTRICT'S RIGHT TO TERMINATE CONTRACT: If the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the

time specified or any extension thereof, or fails to complete said work within such time, or if the Contractor should be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of District, or otherwise be guilty of a substantial violation of any provision of the contract, or if Contractor or subcontractors should violate any of the provisions of this contract, then District may, without prejudice to any other right or remedy, serve written notice upon Contractor and surety of its intention to terminate this contract, such notice to contain the reasons for such intention to terminate, and unless within ten days after the service of such notice such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall upon the expiration of said ten (10) days, cease and terminate. In the event this contract is terminated as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar or identical to those terminated.

ARTICLE 16. COMPLIANCE WITH STORM WATER PERMIT: Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") – General NPDES Permit No. CAS000004 adopted by the State Water Resources Control Board. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit and include all costs in the Contract amount. Contractor shall be responsible for procuring, implementing and complying with the provisions, monitoring and reporting requirements as required by the Permit. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. Contractor shall provide copies of all reports and monitoring information to the District Representative.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Project. The Contractor, by signing this contract, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its proposal accordingly, and assumes any and all risks and liabilities arising therefrom. Failure to comply with the Permit is in violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for fines or delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit or other regulatory regulations. Contractor shall provide copies of all reports and monitoring information to the District Representative.

ARTICLE 17. CLEAN UP: Contractor at all times shall keep premises free from debris such as waste, rubbish and excess materials and equipment caused by his work; debris shall be removed from premises. Contractor shall not leave debris under, in, or about the premises. Upon completion of work Contractor shall clean interior and exterior of building including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are

free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.

ARTICLE 18. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted then upon application of either party the contract shall forthwith be physically amended to make such insertion or correct.

ARTICLE 19. EXCAVATION DEEPER THAN FOUR FEET: If this contract involves digging trenches or other excavations that extend deeper than four feet below the surface, then all of the following apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to proposers prior to the deadline for submitting proposals. (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractors' cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this contract, but shall proceed with all work to be performed under the contract. A contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE 20. REMOVAL OR RELOCATION OF MAIN OR TRUNKLINE UTILITY FACILITIES: The Contractor shall not be assessed for liquidated damages for delay in completion of this project, when such delay was caused by the failure of the awarding authority of this contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the contract discovers any existing main or trunkline utility facilities not identified by the public agency in the contract plans or specifications, he shall immediately notify the public agency and utility in writing. The public utility, where they are the owners, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans

and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work.

ARTICLE 21. CHANGES AND CHANGE ORDERS: Change orders may not cause the total aggregate cost of the project to exceed \$45,000 or the project will become subject to competitive bidding. The District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. In giving instructions, Contractor agrees that the District shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from District, and no claim for an addition to the contract sum shall be valid unless so ordered.

ARTICLE 22. PAYMENTS: The Contractor shall submit to the District an invoice requesting payment for completion of the Work. The District shall review payment request and, as soon as practical, shall: (i) certify that the request is correct in all aspects and should be paid by the District; (ii) reject the request as not proper, stating the reason(s) why rejection is appropriate; or (iii) require that the Contractor provide additional information that the District reasonably determines is necessary to verify the requested payment amount. In the event the District rejects the request for payment, the Contractor may resubmit the request with additional or new information establishing why payment should be made despite the reason(s) set forth in the District's initial rejection. The District shall pay the undisputed amount of the Contractor's request for payment, less any amounts that may be withheld or retained pursuant to this Contract or applicable law, within thirty (30) days of receipt of such request and in accordance with Public Contract Code Section 20104.50.

ARTICLE 23. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS: For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to article 7.2 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code, the provisions of article 1.5 (commencing with section 20104) of chapter 1 of part 3 of the Public Contract Code apply ("Article 1.5").

For purposes of Article 1.5, "public work" means "public works contract" as defined in Public Contract Code section 1101. "Claim" means a separate demand by Contractor for a time extension, or payment of money or damages for work done by or for Contractor, payment for which is not otherwise expressly provided in the contract or to which Contractor would not otherwise be entitled, or a payment disputed by District.

Each claim shall be submitted in writing before the date of final payment and shall include all necessary substantiating documentation. District shall respond in writing within forty-five (45) days of receipt of the claim if the claim is less than \$50,000 ("\$50,000 claim") or within sixty (60) days of receipt of the claim, if the claim is over \$50,000 but less than or equal to \$375,000 ("\$50,000-\$375,000 claim"). In either case, District may request in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the claimant. Any additional information shall be requested and provided upon mutual agreement of the District and the claimant. District's written response to the claim shall be submitted to claimant within fifteen (15) days after receipt of the further documentation for \$50,000 claims or within thirty (30) days after receipt of the further documentation for \$50,000-\$375,000 claims or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

Within fifteen (15) days of receipt of the District's response, if claimant disputes District's written response or within fifteen (15) days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer ("conference") to be scheduled by the District within thirty (30) days. If the claim or any portion of the claim remains in dispute following the meet and confer ("meet and confer") to be scheduled by the District within 30 days. If the claim or any portion of the claim remains in dispute following the meet and confer conference, the claimant may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim until the time the claim is denied, including time utilized as a result of the meet and confer process.

If a civil action is filed to resolve claims within sixty (60) days (but no earlier than thirty (30) days) following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide that both parties select a disinterested third person mediator within fifteen (15) days, shall be commenced within thirty (30) days of the submittal and concluded within fifteen (15) days from the commencement of the mediation unless time is extended upon a good case showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with section 2060.010) of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.

Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall state or county funds pay these fees or expenses. Any party who, after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment, shall pay the attorney's fees of the other party arising out of the trial de novo in addition to payment of costs and fees required under chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure. District shall not fail to pay any portion of a claim which is undisputed unless otherwise provided herein and shall pay interest at the legal rate commencing on the date the suit is filed in court on any arbitration award or judgment.

ARTICLE 24. DEFAULT BY CONTRACTOR: When Contractor, or any subcontractor, or vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the work specifications, the District may, upon five (5) business days' prior written notice describing the default, at its option, annul and set aside the contract entered into with said Contractor, subcontractor or vendor either in whole or in part, and make and enter into a new contract in such manner as seems to the Board of Education to be to the best advantage of the District. Any failure for furnishing such articles or services by reason of the failure of the Contractor, subcontractor or vendor, as above stated, shall be a liability against the Contractor and his sureties. The Board of Education reserves the right to cancel any articles or services which the Contractor may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the

Contractor provided satisfactory proof is furnished to the Board of Education, if requested.

ARTICLE 25. WORKERS AND SUPERVISION: Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from the job site and shall not again be employed at site without written consent from the District.

ARTICLE 26. SUBSTITUTIONS: No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the District.

ARTICLE 27. ACCESS TO WORK: District representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access.

ARTICLE 28. OCCUPANCY: District reserves the right to occupy buildings at any time before formal contract completion and such occupancy shall not constitute final acceptance or approval of any part of the work covered by this contract, nor shall such occupancy extend the date specified for substantial completion of the work.

ARTICLE 29. ASSIGNMENT OF CONTRACT AND PURCHASE ORDER: The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations under this contract without the prior written consent of the District.

ARTICLE 30. FORCE MAJEURE: The parties to this contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by Act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party (ies), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

ARTICLE 31. PERMITS AND LICENSES: The Contractor and all of his employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, such licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

ARTICLE 32. CONTRACTOR NOT OFFICER, EMPLOYEE, OR AGENT OF DISTRICT: While engaged in carrying out other terms and conditions of the purchase order, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District.

ARTICLE 33. ASSIGNMENT OF CLAIMS: In submitting a quote on this public works project, or any subcontractor agreeing to supply goods, services, or materials, and entering a contract pursuant thereto, the Contractor and/or subcontractor do offer and agree to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act, Chapter 2 (commencing with Section 118700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the parties.

ARTICLE 34. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct or work as indicated or specified. If Contractor observes that any of the work required by this contract is at variance with any such laws, ordinances, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any

necessary changes to the scope of work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work knowing it to be in violation of such laws, ordinances, rules or regulations, and without first notifying the District of such violation, Contractor shall bear all costs arising therefrom.

Contractor agrees to post job site notices prescribed by regulation Chapter 8 Calif. Code Reg. §18451(d):

"This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

"The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

ARTICLE 35. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this contract.

ARTICLE 36. GOVERNING LAW: This contract shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 37. NO ORAL MODIFICATION: Any waiver, amendment, modification, consent or acquiescence with respect to this contract or any provision of this contract or with respect to any failure to perform in accordance therewith shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby.

ARTICLE 38. ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA): All contract work that is performed for the _____ School District by outside contractors or workers must meet all of the regulations that have been set forth in the AHERA rule. This means that all work which could disturb the integrity of any Asbestos Containing Building Material (A.C.B.M.) needs to be approved by the District. This refers to the sawing, grinding, cutting, or drilling of any A.C.B.M. in occupied areas of District buildings.

ARTICLE 39. PROHIBITION AGAINST LEAD-BASED MATERIALS: In accordance with the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.), the Contractor shall not use for purposes of the Work, or incorporate into the Work, any lead-based paint, lead plumbing or solders, or other materials, equipment or other things that, in whole or in part, consist of lead and, therefore, may be a potential source of lead contamination.

ARTICLE 40. DRUG FREE/SMOKE FREE/ALCOHOL FREE POLICY: All District sites are designated drug free/smoke free/alcohol free. The use or abuse of controlled substances, tobacco products and alcohol will not be tolerated.

ARTICLE 41. LABOR COMPLIANCE: If the District is using funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004 or 2008 for this Project, then the Contractor may be required to enforce the District's Labor Compliance Program ("LCP").

ARTICLE 42. DIR REGISTRATION: In accordance with Labor Code 1725.5, Contractor and Subcontractors must be registered as of the date of this Agreement.

ARTICLE 44. DVBE PARTICIPATION: This contract will be subject to disabled veterans participation goals and record retention program if State funding is used for the Project. If applicable, in accordance with Education Code section 17076.11, this District will implement its participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such project, Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

[Contractor agrees that, for all contracts subject to DVBE participation goals, the State and the District have the right to review, obtain and copy all records pertaining to performance of the contract in accordance with DVBE requirements. Contractor agrees to provide the State or the District with any relevant information requested and shall permit the State and/or the District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. Contractor agrees to maintain such records for a period of three (3) years after final payment under the contract.]

ARTICLE 43. PROJECT-RELATED RECORDS: The Contractor shall maintain all documents, books, papers, accounting records, computer files, and other information related to the Project and performance of the Work ("Project Records"), including, but not limited to, Change Orders, submittals, requests for information, daily reports, correspondence, permits, insurance policies, certificates of insurance, testing and inspection reports, and safety records. The Contractor shall keep such accurate and comprehensive Project Records as are (i) necessary for proper administration and performance of the Work and (ii) required by law or this Contract. All Project Records, as applicable, shall be maintained in accordance with generally-accepted accounting principles. If the Contract Amount, as adjusted pursuant to this Contract, exceeds \$10,000, then, in accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor pursuant to the Contract. In addition, the District hereby has the right to examine, review, audit and/or copy the Records of the Work during the four-year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall make the Project Records available at its offices at all reasonable times during the performance of the Work and for four (4) years from the Governing Board accepts the Work. However, if any audit is commenced within such four (4) year period, the Contractor shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitation related thereto have expired. In the event the District notifies the Contractor that federal funds have been used in connection with the Project, the Contractor shall retain and make available the Project Records for such longer period as may be required by federal law.

THIS CONCLUDES THE GENERAL TERMS AND CONDITIONS consisting of Articles 1 through 43

INDEPENDENT CONTRACTOR OR EMPLOYEE? DISTRICT GUIDELINES

When contracting with an individual for services the district must establish the nature of the employment relationship. This should occur prior to any services being performed and issuance of any payment. Once the legal relationship is determined, the method of payment is prescribed by law. The problem occurs in the area of who is or is not an employee. There is no clear-cut definition of what constitutes an employee. Instead, there are twenty common law factors that must be analyzed by the district and the district makes the determination.

IRS Publication SWR 40, *Public Schools and Employment Taxes*, lists workers that have already been determined by the IRS to be employees. These are individuals performing the duties of:

- Administrators
- Teachers/Instructors
- Substitutes
- School Bus Drivers
- Clerical Staff
- Athletic Coaches
- Tutors
- Cafeteria Workers
- Counselors
- Examination Monitors
- Proctors
- Librarians

In addition to the categories above, the IRS reclassified the following categories as employees:

- Nurses
- Psychologists
- Intern Psychologists
- Individuals "filling in" on an interim basis
- Specialty Teachers (Art, Poetry, Music, etc.)

What the district calls the individual is irrelevant to the analysis of the employment relationship. The IRS looks at the facts and the relationship on a case-by-case basis.

If the individual in question is **not** in one of the above categories, you may use the guidelines on the following page to analyze the employment relationship between the district and the individual. *We recommend the completed guidelines be kept on file with the district consultant contract for any future IRS inquiries.* The 20 common law factors have all been considered in developing the attached questionnaire.

**INDEPENDENT CONTRACTOR OR EMPLOYEE?
 DISTRICT GUIDELINES**

PART I

	YES	NO
1. Has this category of worker already been classified "an employee" by the IRS? <i>Refer to page 1 for individuals listed in IRS Publication SWR 40 and others identified during the IRS compliance studies in San Diego County.</i>		
2. Is the individual working as an employee prescribed by the Education Code? <i>Education Code §§45100-45451/88000-88263 define what constitutes classified service and §§44800-45060/87000-87333 define certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.</i>		
3. Is the individual already an employee of the district in another capacity?		
4. Has the individual performed substantially the same services for the district as an employee in the past?		
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?		
6. Does the district have the legal right to control the method of performance by this individual? <i>Consider whether the district has to train this individual or give instruction as to when, where, how, and in what order to work. Does the district require the individual to submit reports or perform the services at a district site? These factors would indicate the district maintains control sufficient for an employer/employee relationship. However, it is <u>not necessary</u> that the district <u>exercise</u> this right or have the expertise required to do so. In many cases this would not be practical nor advisable.</i>		
7. Are the services, as being provided, an integral part of school operations? <i>Are the services being provided necessary to the operation of the school, program, project, etc.? This indicates the district has an interest in the method of performance and implies the maintenance of legal control.</i>		

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "YES,"

STOP HERE

Do **not** complete the rest of the questions. The individual is the district's employee and must be paid and reported accordingly.

If all of the above are "**NO**," continue...

**INDEPENDENT CONTRACTOR OR EMPLOYEE?
 DISTRICT GUIDELINES**

PART II

	YES	NO
8. Must the required services be performed by this individual? <i>Consider whether or not the individual may designate someone else to do the work without the district's knowledge or approval.</i>		
9. Does the district have a continuing relationship with this individual? <i>Is this a "one shot deal" or will the district continue to use this individual in the future? This could be on an infrequent or irregular basis but a continuous relationship exists.</i>		
10. Can this relationship be terminated without the consent of both parties?		

If the answer to questions 8, 9, or 10 is "**YES**," there is a good possibility that an employment relationship exists. Questions 8 and 9 are indicators of district control that, in conjunction with other factors, imply an employment relationship. Go back to **PART I** and re-evaluate each question. If questions 1-7 are all still "**NO**," continue.

	YES	NO
11. Does the individual operate an <u>independent</u> trade or business that is available to the general public? <i>A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, school districts are considered to be separate entities. Keep in mind: if the district is utilizing this individual's services on a full-time basis, the individual is <u>not</u> available to the general public. NOTE: Possession of a business license or incorporation does <u>not</u> automatically satisfy this requirement. The determination <u>must</u> be made on the actual <u>relationship</u> between the district and the individual performing services.</i>		
12. Does the individual have a substantial investment in his/her business; i.e., maintains a facility, equipment, etc.? <i>This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.</i>		

If either 11 or 12 are "**NO**," the individual is a district employee -- **STOP HERE** -- and process the individual through payroll.

If 11 and 12 are both "**YES**," continue...

**INDEPENDENT CONTRACTOR OR EMPLOYEE?
DISTRICT GUIDELINES**

PART II – Continued

	YES	NO
13. Does the individual provide all materials and support services necessary for the performance of this service? <i>The district should not be providing office space, clerical, secretarial, or any other support for this individual such as materials, copying, printing, office supplies, etc. Any necessary assistants would be hired by the individual.</i>		
14. Is this paid by the job or on a commission?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? <i>Generally, these types of expenses are paid by an employer; however, some contracts provide for payment of airfare, mileage, etc., for consultants.</i>		

If 11 and 12 are “YES,” 13 through 15 should also be “YES” and are items that should be written into the consultant contract. This individual is an independent contractor. A “YES” to questions 13 through 15 supports the district’s conclusion and substantiates a “reasonable basis” for treatment as an independent contractor. While there are circumstances where the district might pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

**SAMPLE BOARD RESOLUTION
AWARDS**

School District _____ Resolution No. _____

WHEREAS, Education Code Section 44015 provides for the presentation of awards to employees for superior accomplishments, cost effective ideas, and other special acts or services in the public interest, and awards to students for excellence; and

WHEREAS, Education Code Sections 35160 and 35160.1 provide that the governing board may initiate and carry on any program or activity which is necessary or desirable in meeting its needs, or may otherwise act in a manner which it determines is not in conflict or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which the district was established; and

WHEREAS, the board desires to recognize students, parents, and other community Members who perform special acts or services in the interest of public education; and

WHEREAS, the board desires to provide the superintendent with the authority to make awards to employees, students, parents and other community members;

NOW, THEREFORE, BE IT RESOLVED that the following rules and regulations are established and the expenses of awards duly authorized shall be paid by district funds:

- Awards may be made to individuals performing exemplary service to the district or public education;
- Recommendation of individuals for award shall be made by a committee appointed by the superintendent;
- The committee shall recommend the type of award;
- Awards in cash may be made consistent with law and board policy;
- The cost per individual award shall not exceed \$200 unless expressly approved by the board;
- The superintendent shall inform the board of the names of all award recipients, the purpose for which the award was given, and the type of award; and

BE IT FURTHER RESOLVED that this board determines that these activities are in accordance with Education Code Sections 35160, 35160.1, and 44015 and serve the educational purpose as follows:

- Recognizes exceptional academic and professional achievement,
- Increases community participation in service to education,
- Promotes communication of local educational priorities, and
- Commends exemplary service to education.

PASSED AND ADOPTED this _____ day of _____, 20____, at a regular meeting by the following vote, to wit:

AYES:
NOES:
ABSENT:

Attest:

Clerk/Secretary of the Governing Board

NOTE: A resolution is not required. A district may adopt a Board Policy with a corresponding Administrative Regulation.

SAMPLE BOARD RESOLUTION
EVENTS/ACTIVITIES (Food & Beverages)

School District _____ Resolution No. _____

WHEREAS, Education Code Section 44032 requires the payment of actual and necessary expenses of district employees incurred in the course of performing services for the district under the direction of the board; and

WHEREAS, Education Code Sections 35160 and 35160.1 provide that the governing board may initiate and carry on any program or activity which is necessary or desirable in the meeting its needs, or may otherwise act in a manner which it determines is not in conflict or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which the district was established; and

WHEREAS, the board requires the superintendent to promote understanding of district programs through personal contact with individuals and groups; and

WHEREAS, the board recognizes that the superintendent may require officers and employees to meet during meal periods; and

WHEREAS, the board desires to provide the superintendent with the authority to serve non-alcoholic beverages and/or refreshments and to provide for other certain items related to these meetings or events as designated and approved;

NOW, THEREFORE, BE IT RESOLVED that the board hereby designates and approves the following activities for service of non-alcoholic beverages or other refreshments:

- Functions for volunteers and retiring employees
- Activities honoring individuals in education
- Public Schools Week activities
- Educational events sponsored by the board
- Seminars and workshops sponsored by the board
- Board appointed committee meetings
- Group planning and operational meetings; and

BE IT FURTHER RESOLVED that the board hereby designates and approves the following items related to meetings and events:

- Speakers' fees
- Rental of space and/or equipment
- Framed certificates, plaques, trophies
- Flowers, gifts, and

BE IT FURTHER RESOLVED that such expenses for non-alcoholic beverages or other refreshments which are served at duly authorized activities shall be paid from district funds with the cost per person no to exceed the approved meal allowance for the time of day and the total expense per event not to exceed \$_____; and

BE IT FURTHER RESOLVED that this board determines that these activities are in accordance with Education Code Sections 35160, 35160.1, and 44032 and serve the educational purpose as follows:

- Communicates the mission of the Board of Education,
- Increases community awareness of education programs,
- Promotes individual and group support of local educational priorities,
- Improves time management and staff effectiveness, and
- Commends exemplary service to education.

PASSED AND ADOPTED this _____ day of _____, 20____, at a regular meeting by the following vote, to wit:

AYES: _____

NOES: _____

ABSENT: _____

ATTEST:

Clerk/Secretary of the Governing Board

**Note: A resolution is not required. It is recommended that districts adopt a Board Policy with a corresponding Administrative Regulation to address expenditures for food and beverages.*

RESOLUTION ESTABLISHING A REVOLVING CASH FUND
(Education Code Sections 42800 et seq.)
_____ School District, Santa Barbara County

ON MOTION of Member _____, seconded by Member _____, the following resolution is adopted:

WHEREAS, the Education Code 42800 requires that the Governing Board adopt a resolution setting forth the necessity for the revolving cash fund, the officer for whom and the purposes for which the revolving cash fund shall be available and shall include the purposes specified in Section 45167.

WHEREAS, the revolving cash fund is necessary for the expeditious purchase of services and/or to correct errors in calculation or reporting of classified employee payroll or payment of any classified employee's salary pursuant to Education Code 45167; and

WHEREAS, the district desires to provide the same process for certificated employees; and

WHEREAS, _____ is the chief accounting officer of said District; and

WHEREAS, the estimated expenditures of said District for the current fiscal year are approximately _____ Dollars (\$_____); **NOW THEREFORE**,

BE IT RESOLVED by the Governing Board of the District that pursuant to Education Code Sections 42800 et seq., a Revolving Cash Fund in the amount of _____ Dollars (\$_____) for the use of the chief accounting officer is hereby established, subject to the approval of the Superintendent of Schools, Santa Barbara County.

BE IT FURTHER RESOLVED that a bond shall be furnished and all other conditions shall be complied with as forth in the Education Code.

PASSED AND ADOPTED by the Governing Board on _____ by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

I, _____, Clerk/Secretary to the Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of a resolution passed and adopted by the Governing Board at a regularly called and conducted meeting held on said date.

WITNESS my hand this _____ day of _____, 20____.

Clerk of the Governing Board

I hereby approve the establishment of the Revolving Cash Fund as set forth in the foregoing resolution.

Date

Superintendent of Schools, Santa Barbara County

RESOLUTION ESTABLISHING ALTERNATIVE REVOLVING CASH ACCOUNT
(Education Code § 42810)

_____ **School District, Santa Barbara County**

ON MOTION of Member _____, seconded by Member _____, the following resolution is adopted:

WHEREAS, the expeditious purchase of services and/or instructional materials makes it necessary that a Revolving Cash Fund be established for the use of principals/ administrative officials of the District; and

WHEREAS, the instructional supply budget of the District for the current fiscal year is _____ Dollars (\$ _____); and

WHEREAS, _____ is a principal/administrative official of the District;
NOW THEREFORE

BE IT RESOLVED pursuant to Education Code § 42810, a Revolving Cash Fund is hereby established in the _____ Bank in the amount of _____ Dollars (\$ _____) which may be expended for the following purposes in accordance with rules and regulations adopted by the Governing Board: _____

BE IT FURTHER RESOLVED, that a bond shall be furnished as set forth in the Education Code.

PASSED AND ADOPTED by the Governing Board on _____ by the following vote:

AYES: _____ Members
NOES: _____ Members
ABSENT: _____ Members

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA BARBARA)

I, _____, Clerk/Secretary to the Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of a resolution passed and adopted by the Governing Board at a regularly called and conducted meeting held on said date.

WITNESS my hand this _____ day of _____, 20__.

Clerk/Secretary to Governing Board

Date

Superintendent of Schools, Santa Barbara County

**SCHOOL DISTRICT AGREEMENT WITH PARENT/GUARDIAN
TO PROVIDE PUPIL TRANSPORTATION**

This Agreement, entered into this _____ day of _____, 20____, by and between the Governing Board of the _____ School District, hereinafter referred to as the "BOARD," and _____, hereinafter referred to as the "CONTRACTOR," witnesseth:

1. The CONTRACTOR does hereby agree to transport the following pupil(s): _____ attending the _____ School on such days as the school is in session.

The approximate number of miles covered in route, going and coming: _____

2. The BOARD agrees, in consideration of the service provided by the CONTRACTOR under this Agreement, to pay the CONTRACTOR the sum \$_____, payable as follows: *(Indicate whether IRS-approved mileage rate, lump sum, etc.).*
3. All amounts due to the CONTRACTOR under the terms of this Agreement shall be paid within _____ business days upon receipt of an itemized invoice/mileage report from the CONTRACTOR. Payment will be limited to transportation provided on days that the pupil(s) actually attended _____ School, and the BOARD reserves the right to verify the pupil's attendance.
4. The CONTRACTOR agrees, while performing the duties required by this Agreement, to comply with and observe all the provisions of the California Vehicle Code and all other applicable laws, and further agrees to comply with all rules and regulations established by the State Board of Education and/or the Department of Education of the State of California and by the BOARD relating to the safe transportation of pupils.
5. The CONTRACTOR further agrees that prior to the effective date of this Agreement, said CONTRACTOR will provide the BOARD with proof of insurance in the amount of \$_____ liability and \$_____ property damage which shall be purchased from an insurance company authorized by law to transact business in the State of California. CONTRACTOR also agrees to provide the BOARD with evidence of a current vehicle registration and valid driver's license prior to the effective date of this Agreement.
6. It is expressly understood and agreed by both parties hereto that the CONTRACTOR, while performing services under this Agreement, is an INDEPENDENT CONTRACTOR and is not an officer, agent, or employee of the _____ School District.
7. It is also expressly understood and agreed to by both parties hereto that upon the willful violation of any of the terms and conditions of this Agreement by either party herein, this Agreement shall terminate and shall be of no force and effect.
8. Service under this Agreement shall begin on _____ and terminate on _____, unless terminated earlier as hereinbefore provided or by the mutual consent of the parties hereto.

Authorized Agent for CONTRACTOR

Authorized Agent for BOARD

Printed Name and Title

Printed Name and Title

8/07

CONTRACT TO REIMBURSE PARENT/GUARDIAN FOR MILEAGE

SANTA BARBARA COUNTY EDUCATION
OFFICE COUNTY SCHOOL NURSE RESOURCE
GROUP HEALTH OFFICE DURABLE
SUPPLIES LIST

OFFICE EQUIPMENT:

Book ends
Bulletin board
Card files
Chairs, secretarial and/or student
Chairs, stackable or folding chairs
Computer, monitor, printer and work station
Desk drawer divided file(s)
Desk/work table
Doormat
Fan
File Cabinet, Locking
File(s) Desktop
Flashlights/penlights
File Folders/labels
Hanging file folders
Hanging file folder frames
Heater
Paper clip dispenser
Paper shredder
Pencil sharpener, i.e. manual, electric
Pens/Pencils/Highlighters
Refrigerator with icemaker
Rolodex
Ruler
Shears/scissors
Stapler/staples
Storage Cabinet 72X36X24"
locking, if needed
Tape dispenser
Telephone/answering machine/cell
phone/pager/walkie-talkie
Timer, i.e. 1hr. kitchen type
Typewriter
Wastebasket
Wall clock with second hand
Window coverings - blinds/shades

BOOKS/REFERENCE

Dictionary
First Aid Book
Medical dictionary
** PDA with related clinical software
** Nursing Reference Materials

** Items must have approval of the school nurse

MEDICAL EQUIPMENT:

** Automated External Defibrillator
Basins, i.e. kidney, round, large
** Biohazard waste container
Blankets, cotton
B/P kit with sphyg. & interchg. cuffs,
i.e. infant, child, adult, large adult
Cabinet, locking storage
Containers, i.e. bottles, canisters,
dispensers, bags
Cot(s)
First aid kits – empty
Flashlight/penlight - narrow, bright beam
** Hearing Screening Equipment, i.e.
Audiometer, Tympanometer, Oto-acoustic
Emissions Tester
** Hot water bottle
IV Pole
Lamps, i.e. lighted, magnifying
Lice screening equipment, i.e. combs
Liquid soap dispenser
Magnifying glass
Medicine cabinet or cart, locking
Nail clippers/file
Otoscope/Ophthalmoscope
Paper towel dispenser
Pill Counter/Pill Cutter
Pillows/Pillow case
Privacy screen(s)
Pulse oximeters
Refrigerator with freezer, icemaker
Ring cutter
Safety straps
Scale
Scissors, bandage, heavy duty
Scoliometer
Screen(s), privacy
Splinter forceps
Spray bottles
Stethoscope, adult/child
Stretcher(s) (for use in disaster only)
Suction machine, portable
Thermometer(s), i.e. electronic digital, forehead,
sublingual, ear, other)
** Vision Screening Equipment, i.e. Snellen, Titmus,
color vision, refraction screener, functional test
Waste container – covered, with foot pedal lid
Wheelchair - standard w footrests

SANTA BARBARA COUNTY EDUCATION OFFICE COUNTY SCHOOL NURSE RESOURCE GROUP HEALTH OFFICE EXPENDABLE FIRST AID SUPPLIES LIST	
<u>A</u> *Air splints Alcohol – 70% (Isopropyl) liquid, individual wipes *Ambu bags Applicator sticks – with or without cotton *Asthma control devices: peak flow meters, aero chambers, disposable mouthpieces Antibacterial soap	<u>H</u> *Hand lotion
<u>B</u> Bandages, i.e., adhesive, elastic, gauze, telfa, triangle; stretch, liquid adhesive bandage Baking soda Batteries	<u>I</u> Ice bags/Chemical cold packs *Isolyzer
<u>C</u> *Calamine lotion/Calagel *Constricting bands, i.e. Penrose drain Containers, i.e. bottles, canisters, dispensers Cotton – rolls, balls CPR mask with one way valve (Child, Adult and Infant sizes)	<u>L</u> Lice combs with metal teeth
<u>D</u> Diapers *Disinfectant/germicide, i.e. bleach, wipes, Hibiclens, Phisoderm, sanicloths Dressings, i.e. sterile and non-sterile gauze, Telfa, ABD Newer technologies: <u>Film dressings</u> (transparent): <i>examples-</i> Tegaderm (3- M); Johnson and Johnson Bioclusive Transparent Dressing; Kendall Polyskin, <u>Hydrocolloidal/Hydrogel Dressings</u> : <i>examples-</i> DuoDERM (ConvaTec); Tegaserb (3-M);, 2nd Skin® Quik Stik™ Adhesive Dressings; Comfeel; Replicare; Lamin; Carrasyn; IntraSite gel; Solosite	<u>M</u> Magnifying glass Masks/face shields Medicine droppers
<u>E</u> *Epinephrine ampules *Epi-pen *Eye/face protectors (goggles, face shields) *Eye flush system, i.e. IV tubing, saline, hanging set-up Eye pads/eye shields Eye wash cups	<u>N</u> Nail clippers/files Normal saline *Nursing reference materials
<u>F</u> First aid kits – empty	<u>P</u> Paper products, i.e. cups, towels, sheets, pillow covers Petroleum jelly, i.e. petrolatum emollient *Pill counter/Pill cutter Plastic bags – zip lock, various sizes
<u>G</u> Gloves – non-sterile disposable plastic, latex, synthetic, vinyl ¹ Glucose Gowns/plastic aprons - protective	<u>R/S</u> Ring Cutter, blades Saline (for contact lenses, eye wash, wound irrigation) Salt Safety straps Sanitizer, liquid hand (alcohol base) Sanitary napkins Save a Tooth kits Scissors *Sharps container Slings Soaps, i.e. antiseptic, liquid detergent Splints – simple, straight, cardboard, plastic *Syringes/needles
	<u>T</u> Tape, i.e. adhesive, paper, micro-pore Thermometers – forehead, ear, sublingual, other (including disposable) Thermometer probe covers, disposable Tissues, i.e. wipes, cleansing Tongue depressors *Tuberculin skin test solution Tweezers or small forceps
	<u>V/W</u> *Vaccine Wipes – diaper

¹ Recommend non-latex due to potential allergic reaction

* = ITEMS MUST HAVE APPROVAL OF THE SCHOOL NURSE BEFORE ORDERING