Commercial Warrant Manual



San Diego County Office of Education
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SAN DIEGO COUNTY OFFICE OF EDUCATION

BOARD OF EDUCATION

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INTRODUCTION

The purpose of the Commercial Warrant 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 commercial warrant processing. It is organized in three parts:

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

PART 2 (**Teal Bar**) reviews the San Diego County Office of Education procedures, including audit procedures, approval certifications, Series 11 and 14 warrant processing, and the steps for replacing/canceling lost/damaged/overage warrants.

PART 3 **(Red Bar)** is the main section which details the audit requirements for the various types of 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.

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 documentation is required when a warrant is selected for audit. Minimum documentation required for audits is next to the ✓ symbol on the appropriate topic page.

We welcome your feedback. If you have any questions or suggestions, contact Sheri Walden, Manager of Commercial Warrants, San Diego County Office of Education, sheri.walden@sdcoe.net or 858-295-6692.

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ABBREVIATIONS

BPC	Business and Professions Code
CC	Civil Code
CCP	Code of Civil Procedure
CFR	Code of Federal Regulations
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
VC	Vehicle Code
5CCR	Title 5, California Code of Regulations – Education

California Codes may be accessed via the following websites:

California Law at:

http://leginfo.legislature.ca.gov/faces/codes.xhtml

Federal Code of Regulations:

http://www.ecfr.gov/cgi-bin/ECFR?page=browse

REFERENCE

PART ONE – OVERVIEW

DUTY TO AUDIT

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 the majority of the governing board or an authorized district official.

EC §42634
EC §85234 Required Contents of District Orders

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. (The Education Code allows for the district to retain the itemized bill and make it available to the county office for audit.)

EC §42635
EC §85235 Requirement for Submission of Orders

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.)

Examination and Approval of District Orders

EC §42636
EC §85239 If the district order appears properly drawn for the payment of legally authorized expenses against the proper funds of the district and there are sufficient monies in the fund, the county office will endorse the order as “examined and approved” and affix a signature, number, and date prior to transmittal to the county auditor.

Disapproval of District Orders

EC §42638
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.

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.**

REFERENCE

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. All transactions entered into by the officer or employee **shall be reviewed by the governing board every 60 days**. *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 §70902

A similar Education Code authorizes the board of a community college district to adopt a rule delegating any power not expressly made non-delegable by statute to the district's chief executive officer or any other employee or committee the governing board may delegate. The rule delegating authority must prescribe the limits of the delegation.

EC §17605
EC §81656
PCC §20111

By a majority vote, the governing board of a school district may adopt a rule 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 $50,000 (as adjusted annually by the Superintendent of Public Instruction) for equipment, materials and supplies).

✓

Minimum Documentation for Audit:

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

EC §42647

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.

Fiscal Accountability

EC §42650

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:

EC §1241.5

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 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.

REFERENCE

California Constitution Article 16, Section 6

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.

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

REFERENCE

BIDDING REQUIREMENTS

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

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.

Verify Current Bid Limit at:

http://www.cde.ca.gov/fg/ac/co/

With limited exceptions, school districts and community college districts are required to competitively bid any contracts involving an expenditure of more than $50,000 (as adjusted annually by the Superintendent of Public Instruction) for equipment, materials and supplies, services, and repairs and more than $15,000 for public projects (including materials and labor). Sales tax, delivery, and installation must be included in determining these amounts.

Equipment, Materials, and Supplies

- 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.

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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 cannot exceed $50,000 (as adjusted annually by the Superintendent of Public Instruction) without being bid. Note that the PCC 20111 specifies a contract and not a fiscal year. A multi-year agreement for less than $50,000 (as adjusted annually by the Superintendent of Public Instruction) would require bidding if the total expenditure exceeds the bid limit.

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.

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

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Miller v. McKinnon, supra, 20 Cal. 2d 83, 88
Reams v. Cooley, 171 Cal.

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 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

REFERENCE

150 (1915)

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.

PCC §20107
PCC §20651

Bid Security

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.

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.

PCC §20112
EC §81641

Notice Calling for Bids

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 Web site or through an 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.

GC §6000-6008

A "newspaper of general circulation" is 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 has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement.

PCC §20103.8

Alternate Bid Items (Additive or Deductive)

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:

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 taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

REFERENCE

4. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders 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

Contractor Registration and Reporting (PWC-100)

SB 854, 2014

Effective January 1, 2015: The Notice Calling for Bids and contract documents must include the following information:

- 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 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

Amended by SB 96, 2017

Effective July 1, 2017, SB 96 increased the registration and PWC-100 reporting limit as follows:

$25,000 or public project
$15,000 for maintenance projects

PCC §20116
PCC §20657

Bid Splitting

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 *provided the competitive bidding requirement has been met*. Contracts for related school improvements have been held by the courts to be individual contracts in instances where each contract was *decided on separately and independent of others*.

REFERENCE

BIDDING EXCEPTIONS AND ALTERNATIVES

Following are various statutory exceptions to the competitive bidding requirement:

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

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."

PCC §20118.3
EC §81651

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.

PCC §20113
PCC §20654
PCC §1102

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.

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A 2004 decision 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 as follows:

"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 compliance with SB 854 (2014) statutes, bonds, and security otherwise required by law.

GC §4217.2
GC §15814.10 et seq.
EC §81660

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.

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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

REFERENCE

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.

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

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 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 $250,000 ($50,000 (as adjusted annually by the Superintendent of Public Instruction) for School Food Authorities in California using federal funds).

FDA defines perishable food as 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.

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 R edev. Agency (1980) 104 Cal. App. 3d 631

Public Policy Exception

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.

Districts should consult with legal counsel prior to making a determination that competitive bidding is not required under a public policy exception.

REFERENCE

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

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.

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.

GC §53060

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.

EC §17540
EC §17602
EC §81653

Surplus Real 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 Personal Property (Used)

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

REFERENCE

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.

PCC §20117

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 Construction Cost Accounting Commission ("the Commission"), school districts may award contracts for public projects without engaging in a formal bidding process as follows:

- Public projects valued at $60,000 or less may be performed by force account, negotiated contract or purchase order.
- Projects valued up to $200,000 may be performed under contracts awarded by the "informal" bidding process. If all bids received exceed $200,000, the awarding agency may authorize by four-fifths vote of the governing board to award a contract up to $212,500.
- Projects greater than $200,000, except as otherwise provided in the Act, 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:

The governing board elects, by resolution, to become subject to the Commission's cost accounting standards.
The governing board adopts procedures to implement the informal bidding process.
The district forwards a copy of the resolution to the State Controller along with a copy of the informal bidding procedures (Board Policy and/or Administrative Regulation)
The district may elect to develop and maintain a list of contractors by trade who will be notified when a project is bid in the trade for which a contractor is listed. If the district elects to maintain a list, the Commission requires an annual review and update of the contractors by mandating written notice 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 registered bidders for the following calendar year. In January of each year, the district can develop its list of registered bidders in each trade. The district may include any contractor on the lists of registered bidders.
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.
The governing board may discontinue the district's participation under the Act by adopting a resolution stating this fact. A copy of the resolution must be filed with the State Controller.

REFERENCE

Once opted in, a district must use the bid limits and procedures set forth in the Act.

Emergency Procedures (CUPCCAA)

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 a 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 a 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 7 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, calling or emailing your CUCCAC representative, or via the website at: https://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf

PCC §12100 et seq.

PCC §10298-§10299

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.

The program authorizes 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 non-information technology products and services without conducting their own competitive bidding process.

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, 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).

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

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 that vendor is the lowest responsive and responsible bidder.

REFERENCE

2(b)

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: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/CMAS-Program-Overview

PCC §20111

North County Educational Purchasing Consortium (NCEPC)

The North County Educational Purchasing Consortium was formed in 1985 as a legal joint powers agreement by a small group of San Diego school district purchasing officials to combine efforts to affect greater buying power and savings, meet legal requirements, and reduce duplicate administrative efforts.

Commonly used supplies, equipment and services are competitively bid by various members of the consortium. There are 23 bids available for use by consortium members, ranging from art supplies to copiers.

Local school districts are eligible for membership in the consortium. Currently, consortium membership includes 25 member districts and 18 associate member districts.

Additional information about the NCEPC may be found at its website: www.ncepc.org

REFERENCE

CONTRACTS – GENERAL

Authority

EC §17604
EC §17605
EC §81656
PCC 20111

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 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:

- Scope of Work: A description of the service to be performed or goods to be delivered.
- Price: The amount of consideration for the services to be performed to the goods to be delivered. In the case of indefinite quantity purchases, a Not to Exceed amount is appropriate.
- Term: The start date 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 of 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 and initialed 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

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 stipulation as to the amount of bid security required; however, standard practice is to require a bid bond for 10 percent of the total bid price.

CC §9550 et seq.

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 & Review

Districts are not required to have all contracts approved as to form; however, it is highly recommended to have legal counsel review contract forms periodically to ensure compliance with any changes in the law.

Sample contract documents are available at:

- Auditor's Contract – K-12: Audit Contract - K-12
- Auditor's Contract – Community College: Audit Contract - Community College
- Public Works Contract for Services Under $15,000: Under $15K Contract (NCEPC website). This contract may be modified for CUPCCAA districts.

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. Any blank pages should state in large letters PAGE INTENTIONALLY LEFT BLANK.

REFERENCE

See Also: Continuing Contracts

Vendor Contract Forms

Contractor/vendor contracts usually favor the contractor and may not always include provisions satisfactory to the district or that are in accordance with law. Districts should have such forms reviewed by legal counsel.

Evergreen clauses in agreements are not in compliance with legal limits for continuing contracts and such automatic renewal clauses should be stricken.

A common provision of these contracts is "This contract is governed by the laws of the State of _____." Often this is another state if the company providing the service is based out of California. If the agreement specifies another state, it should, if possible, 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

EC §17596

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: <u>not to exceed five years</u>
- For materials or supplies: <u>not to exceed three years</u>

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

The term limitations apply to "other agency / piggyback" contracts.

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.)

REFERENCE

EC §45103.1
EC §88003.1

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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, which may be completed and submitted on-line.

Districts on-line with the PeopleSoft System may utilize the Supplier entry screen to identify those vendors subject to this requirement and generate an automatic notification when the payment threshold of $600 has been reached. Additional information may be obtained from the EDD website at: www.edd.ca.gov

PeopleSoft districts can enter 1099 information in the Supplier module under the Location Tab.

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.

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.

REFERENCE

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

Internal Revenue Service (IRS) Backup Withholding Requirements

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:

- 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://la.www4.irs.gov/e-services/Registration/index.htm

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

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.

REFERENCE

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.

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 of $600 or more 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, 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.

The County Office of Education prints Form 1099-MISC and submits the information to the IRS electronically for all on-line districts by January 31. The data required to process the forms is extracted from PeopleSoft. The supplier must be flagged for withholding, the default box check on the 1099 screen correct coding selected to generate a Form 1099-MISC:

PeopleSoft	
01	Rents
02	Royalties
03	Prizes, Awards, etc.
04	Federal Income Tax Withheld

REFERENCE

06	Medical and Health Care Payments
07	Non-Employee Compensation
08	Substitute Payments
13	Excess Golden Parachute Payments
14	Gross Attorney Proceeds (Attorney settlement agreements)
15A	Section 409A deferrals
15B	Section 409A income

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)

EC §45125.1 - §45125.2

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 should be evaluated to determine whether compliance is required, including:

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

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 determine whether a contractors 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.

Sales and Use Tax (State Board of Equalization)

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 – 7.25% (effective 1/1/17) statewide rate for purchases from qualified vendors engaged in business throughout California, or
2. *California* Use Tax – 7.25% (effective 1/1/17) for purchases from out-of-state vendors.

Additional district taxes are levied in some cities/counties, including San Diego. The reason for this difference is that voters in those cities/counties approved the creation of

REFERENCE

one or more special tax districts to provide revenue for specific projects or other government services. The combined sales and use tax rate in the city of San Diego is 7.75%. Some cities within San Diego County have higher rates. Refer to "California City and County Sales and Use Tax Rates," on the State Board of Equalization website at: http://www.cdtfa.ca.gov/taxes-and-fees/rates.aspx for a complete list of sales and use tax rates by county and tax district.

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., San Diego) 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 (7.75% for the city of San Diego).

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 sales 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 the 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 the 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 (i.e., 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 is 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:

  Purchase of certain food products for human consumption; and

  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.

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).

REFERENCE

"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 (i.e., 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.

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.cdtfa.ca.gov.

REFERENCE

PART TWO: COUNTY OFFICE PROCEDURES

AUDIT PROCEDURES – GENERAL

EC §42636,
EC §85236

The San Diego County Office of Education 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.

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.

Even though the County Office is responsible for auditing commercial warrants, the district is ultimately responsible for ensuring that 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.

While some commercial warrants will be randomly selected for audit, 100% of the following types of expenditures will be placed on hold for audit:

- Public Works & Maintenance Projects
- Consultant/Independent Contractor Services
- Nonpublic Schools/Agencies
- Credit Card Accounts (i.e., Visa, MasterCard, American Express, P-cards)
- Travel and Claims Paid to Individuals
- Revolving Cash Fund Disbursements
- District Payments Made to Associated Student Bodies
- Single Payments

Pre-Audit Notification

PeopleSoft: Users will receive a Hold Notification from the PeopleSoft system. Districts are to provide documentation as outlined in the **Pre-Audit Checklist.** Requests for additional documentation will be made using the Conversation Piece within the Voucher approval module.

For warrants held for audit, districts are required to furnish the appropriate and complete documentation to support the expenditure. **REFER TO PART 3, AUDIT DOCUMENTATION, FOR SPECIFIC REQUIREMENTS.** Districts are to attach the backup to the voucher. Large files may be sent using BS Upload.

If documentation is missing or clarification is needed regarding an audit issue, the audit clerk will note this in the conversation piece within PeopleSoft.

Offline Districts: Please continue to check the Commercial Warrants Website

Printing and Availability of Warrants

- **PeopleSoft Pre-Audit:** In order for warrants to print overnight, vouchers (invoices), must be submitted before **2:00 p.m.** This will allow them time to review the list and release warrants not being held for audit. Warrants entered after 2:00 p.m. will not be reviewed until the following day, unless time allows, and will run the following evening.

REFERENCE

- 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/email signed by the authorized agent must be forwarded to the Commercial Warrant Audit Unit giving specific approval. Districts must notify their audit clerk by phone when making special arrangements to pick up warrants. *Otherwise, the warrants will be forwarded for truck mail delivery. ID is required.*

- Warrants are processed **in the order in which they are received** at the County Office Commercial Warrant Audit Unit, taking truck mail schedules into consideration. Vouchers are reviewed daily. Vouchers held for audit are *usually* released within 3 – 5 business days if all necessary documentation has been provided. There is no mechanism to give priority to specific types of expenditures. Every effort will be made to release warrants as soon as possible; however, a next-day turnaround for audited warrants should never be relied upon because of the high volume of warrants. Approval of a voucher is dependent upon completeness of documentation furnished by the district.

Emergency Warrants

- Occasionally an emergency warrant needs to be processed. District staff should alert their audit clerk by phone if an "emergency" warrant needs to be processed. Audit documentation for emergency warrants should be forwarded in advance to allow time for review. Rush warrants are for emergencies such as payroll corrections, court settlements, and the like.

Warrants – Offline Districts Only

The County Office audit clerk reviews warrants for the following:

1. Authorized agent signature (the name on the annual resolution)
2. Fund name, as appropriate
3. Numerical sequence
4. Voids are marked/stamped
5. No corrections or erasures in the amount portion
6. Payee must agree with supporting documents (listing sheets/warrant registers)

7. Payee must not be blank. Should this occur, the warrant will be canceled by the County Office.

Invoices

Invoices are to be submitted as an attachment to the PeopleSoft voucher. The County Office Audit Clerks review 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" should clearly indicate that warrant "should be made payable to (name of individual as indicated on the W-9)."

REFERENCE

3. Nature of expenditure must be legal. Be alert to items indicative of being a gift of public funds.

4. Purchases for entertainment such as movie tickets, admissions, etc. purchased with federal funds (prohibited expenditure).

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. Non-resident withholding for independent contractors or foreign tax for goods bought outside of the United States.

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 verified that the vendor has a valid California Reseller's Permit. This must be readily available upon request. See: https://efile.boe.ca.gov/boewebservices/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. Approval letter should be submitted with invoice.

13. Payments should generally be made in arrears. Advance payments should be limited to: 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.

REFERENCE

AUTHORIZATIONS AND APPROVALS

EC §42636, §85236

Cash Approval (Daily)

In addition to auditing listing sheets, invoices and warrants, cash must be approved for the daily expenditures of each district before warrants are signed/approved and listing sheets are submitted to the County Auditor.

Various units/sections at the County Office are involved in the approval and signing process:

1. The Commercial Warrant Audit Unit prepares a "Worksheet of Daily Expenditures" (by district, by fund) for submission to the Financial Accounting Unit.
2. The Financial Accounting Unit approves/disapproves the cash for the daily expenditures of each district by fund.
3. The Commercial Warrant Audit Unit signs the warrants for off-line districts that had cash approved.
4. The Commercial Warrant Audit Unit submits the total daily expenditure information, including listing sheets, warrant registers, voided warrants (off-line districts only), and bank reconciliation FTP files to the County Auditor daily.

Insufficient Cash To Approve Warrants

Off-Line Districts (Series 11)

If an off-line district does not have sufficient cash to cover the daily expenditures, the district is notified by the Financial Accounting Unit and the listing sheet(s)/warrant(s) are pulled out of the daily processing and are not signed. They are held until sufficient cash is available or until month-end, when they are voided.

On-Line Districts (Series 14)

The procedure varies slightly for on-line districts because warrants are signed by the computer ***prior*** to cash being approved. Once a warrant is signed by the County Superintendent of Schools it can only be canceled, not voided. If cash is not approved for a district, the district is notified. A cash transfer request may be sent to the Financial Accounting Unit to cover the shortage. Otherwise, the district is asked to determine which warrants must be canceled (not voided) as there may be sufficient cash for some, but not all, warrants. If there is not sufficient time to resolve the issue with the district before the daily processing deadline, the Commercial Warrant Audit Unit will determine which warrants to cancel and do so. The warrants must be canceled and submitted to the County Auditor the same day that the warrants are dated.

Sample Certification/Approval Stamps

The following certifications and/or approval may be requested during the audit process. Districts may use these for their own internal use as well.

Credit Card Expenditures Certification

Certification by individual responsible for district credit card expenses:

"I hereby certify that I have reviewed this claim and it represents only actual and

REFERENCE

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."

Signature _____(Authorized School District Official)

Governing Board Approval Certification

"Approved by the governing board on _____"
(Must be current fiscal year date)

Signature/Title _____

Travel Expenditures Certification

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)

REFERENCE

Emergency Waivers

PCC §1102, §20113, §20114, §20654

Districts may award contracts without competitive bidding in specific emergency situations. An approved emergency request is to 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.

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

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 the contracting process, and to advise them an emergency contracting resolution will come before the Board at a noticed meeting.

1. Contact the Deputy Superintendent regarding the emergency waiver request and follow up with a letter on district letterhead to the attention of the Deputy Superintendent. Copy Manager of Commercial Warrants at sheri.walden@sdcoe.net. Include relevant information about the emergency including the nature of the emergency, description of work to be done, and the estimated cost along with the date of adoption of the emergency resolution.

2. 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 all invoices that are paid under the emergency waiver for audit purposes.

3. *Following* SDCOE 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.

4. Forward a copy of the emergency resolution adopted by the governing board to the Assistant Superintendent, Business Services, San Diego County Office of Education.

REFERENCE

CC §9550

6. 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.

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

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Districts may initiate wire transfers to make certain payments, such as bond debt service payments and insurance premium payments. Wire transfers should not be initiated for payments that are routinely subject to the commercial warrant audit process. Districts must use the on-line Wire Administration and Request Portal (WARP) system established by the County of San Diego Treasurer-Tax Collector. All wire transfer requests (except those requested by charter schools) are approved by the Commercial Warrant Audit Unit prior to being processed by the County Treasurer's Office, County of San Diego. Wire transfer requests must be approved by the County Office Commercial Warrant Audit Unit no later than **2:00 p.m. at least two (2) business days prior to the settlement date**, so districts should allow sufficient time to meet their deadlines.

REFERENCE

California School Accounting Manual, Accounting Terminology

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. 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 San Diego Auditor and Controller.

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

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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.

Warrant Processing Off-Line Districts (Series 11)

Off-line districts produce warrants using their own financial systems. Warrants are not valid until they are received and processed by the County Office of Education, and signed by the County Superintendent of Schools.

Warrants for off-line districts should be submitted to the County Office of Education, Commercial Warrant Audit Unit, as follows:

1. Warrants must be listed on the warrant registers (listing sheet) in numerical sequence, <u>including voids</u>. Voided warrants must be marked "void" and included with the corresponding warrant register.
2. A separate warrant register must be completed for each fund. More than one warrant register may be completed for a fund; however, it must be separately numbered if warrants from other funds fall in between so that the numerical sequence of the warrants is maintained.
3. **The following items should be submitted <u>together by 12:00 p.m.</u> for warrants to be signed the following business day**:

   - Warrants
   - Warrant registers (with corresponding warrants, including voids, attached)
   - An electronic warrant data file must be transmitted at the same time via an upload to

REFERENCE

the Business Services secure site which requires the assignment of a user name and password (contact the Clerk in Commercial Warrants). This is used to create the Positive Pay bank file. **Electronic files should be named as follows:**

- First two digits: County Office District I.D. Number, followed by an underscore (e.g., 0XX000_)
- Remaining six digits: Listing Sheet Number (fill with zeros, as needed)

4. The warrant registers must begin with "001" at the beginning of each new fiscal year.
5. Rush warrants must be properly identified on the outside of the packet and the Commercial Warrant Audit Unit notified by phone. Preceding warrant numbers must be on file. Rush warrants should be kept to a minimum.
6. When student refunds are issued, community college districts should call to inform the Commercial Warrant Audit Unit since extra staff time is required to sign the large volume of warrants. Additionally, a certification statement should be included indicating that the sequence and totals have been verified by district staff. This will expedite processing.

EC §42634

Warrant Registers (Listing Sheets)

The format of warrant registers for off-line districts must be approved by the Commercial Warrants Manager in District Financial Services. The following items must appear on the warrant and/or warrant register:

	Warrant	Warrant	Register
1.	Official school district name	X	X
2.	Authorized signature	X	
3.	Warrant register number (sequential order)		X
4.	Name of fund	X	X
5.	Two-digit fund number		X
6.	Two-digit sub-fund number		X
7.	Four-digit auditor's district identification number		X
8.	Warrant series number ("11", off-line districts)	preprinted	X
9.	Warrant number	preprinted	X
10.	Date	X	X
11.	Payee	X	X
12.	Amount	X	X

Minor corrections may be made on items 1, 3-9 only. Item 12, Amount, may not be corrected on the warrant. Warrants with blank payee information will be deleted by the Commercial Warrant Audit Unit.

REFERENCE

Warrant Processing – On-Line Districts (Series 14)

1. Commercial warrants and warrant registers for on-line districts are generated at the County Office of Education.

   Series 14 warrants are generated nightly from Monday through Friday.

Special Handling of Warrants: (Cancel, Copy, Duplicate, Forgery, Void, Void for Age)

Website: https://www.sdcoe.net/business-services/financial-services/commercial-warrants/Pages/commercial-warrants.aspx

Canceling 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 signed.

1. If the district is canceling the warrant:
   - Submit the warrant along with the following documentation to the Financial Accounting Unit for processing to the County Auditor:
   - Series 11: a completed Series 11 - Offline District Request to Cancel Warrants
   - Series 14: a completed Series 14 – PS Online District Request to Cancel Warrant
   - District should write or stamp the word "Canceled" across the County Superintendent's signature. NO OTHER MARKS OF ANY KIND SHOULD APPEAR ON THE WARRANT.

2. If the County Office of Education is canceling the warrant:
   - District must make the request in writing or via an email to their assigned Audit Clerk.
   - The Commercial Warrant Audit Unit will forward the warrant and form to the Financial Accounting Unit for processing to the County Auditor.

Community College Districts:

Canceled warrants for community college districts are always credited to the expenditure originally charged, regardless of the year in which they were written.

Copy of Warrant

Districts often receive inquiries from vendors as to proof of payment. When this occurs, the district should call the Commercial Warrant Audit Unit and provide the following information:

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

REFERENCE

The Commercial Warrant Audit Unit staff will immediately access the County Auditor's warrant status database to determine whether the warrant has cashed. If cashed, the date will be provided and the district may request a copy of the cashed warrant at that time. The County Office will forward a copy of warrant to the district.

Duplicate (Replacement) of Lost, Stolen, Destroyed Warrant

When a valid warrant has been lost, stolen, or destroyed and a duplicate (replacement) is requested:

1. The district notifies the County Office in writing, or via the Commercial Warrants website (Document Request), of:

   - Payee/vendor
   - Warrant number (including Series 11 or 14)
   - Warrant date (date signed by County Superintendent of Schools)
   - Amount
   - Fund

2. The County Office Commercial Warrant Audit Unit will verify the warrant status (cashed/not cashed) with the County Auditor.

3. If the warrant has been cashed, the County Office will notify the district. The district may request a copy of the warrant, if needed.

4. If the warrant has not been cashed, the County Office will forward the following forms to the district for appropriate action:

   - Instructions for completing Affidavit
   - Affidavit to Obtain Duplicate of Lost or Destroyed Warrant to be forwarded to and completed by payee/vendor

REFERENCE

5. The district or payee/vendor returns the completed Affidavit to the County Office for processing which includes a cancelation of the original warrant. THE COUNTY AUDITOR REQUIRES THE ORIGINAL PAPERWORK, INCLUDING THE PAYEE'S ORIGINAL SIGNATURE. Forms may be e-mailed to the district for processing, but completed forms cannot be accepted via e-mail. The County must receive original paperwork.

6. The County Office will forward the Affidavit to the County Auditor and will cancel the warrant.

7. After the County Auditor approves the cancelation, the County Office will issue and forward a replacement warrant to the district.

GC 29853

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.

If a lost warrant is over six months old, also see "Voided for Age—Issuance of New Warrant" for additional requirements.

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

NOTE: The County Treasurer keeps copies of warrants for a period of FIVE years.

Forgery

If a payee/vendor reports to the district that a warrant belonging to them has been forged, the district should immediately call the Commercial Warrant Audit Unit: (858) 295-6688 to report this fact, along with the following information:

- Payee/vendor name
- Payee/vendor phone number and address
- Warrant number
- Warrant date (date signed by the County Superintendent of Schools)
- Amount
- Fund
- Date paid
- Warrant number, warrant date, and warrant amount for two (2) <u>previous</u> payments made to the same vendor (if applicable)

The Commercial Warrant Audit Unit will send a written report to the County Auditor. The County Auditor will contact the payee/vendor directly to give specific instructions for additional action necessary to investigate the forgery. *A replacement warrant should not be processed until the County Auditor has given the authority to do so.*

Stop Payments

Stop payments are no longer an option with the current County banking system. The only method available to terminate the transaction of an issued warrant is through a cancelation, which requires a written request. See section on "Canceling a Warrant." Requests received by 12:00 noon will be processed for cancelation the following business day.

REFERENCE

Voiding Warrants (Off-Line Districts ONLY)

EC §42632-3
§85232-3

1. Voiding warrants applies only to warrants that have not been signed by the County Superintendent of Schools. To invalidate a warrant with the County Superintendent's signature, see "Canceling a Warrant."

2. The need to void a warrant may arise from various situations, such as:

   - An error was made and caught by the district before sending the warrant to the County Office of Education. The district makes a "void" notation on the warrant and the warrant register. ***The district also needs to make sure that the electronic data file shows the void.***
   - The district notices an error after the warrant was sent to the County Office of Education but before the warrant is signed. The district should call the Commercial Warrant Audit Unit to request that the warrant be voided. The County Office will revise the electronic data file, unless there is a large volume of voided warrants. Should that occur, the district is responsible for transmitting a revised electronic data file.
   - A problem was discovered during the audit process at the County Office before the warrant is signed.

GC §29802

Canceled for Age – Issuance of a New Warrant

Warrants are canceled, as required by the County Auditor, after a period of six (6) months. Commercial Warrants cancels the overage warrants, and the district is credited for the amount of the canceled warrants. The Financial Accounting Unit processes a journal entry and sends notification to the district. The district then determines whether to reissue a new warrant to replace the warrant voided for age. To request issuance of a new warrant in lieu of a warrant canceled for age:

GC §29802

Authority

Any time within two years from the date on which the original warrant became void, the payee or assignee of any warrant which is void as provided in this section may present the warrant to the governing body of the agency on which the warrant was drawn, or declare by affidavit that the warrant has been lost or destroyed, and the governing body may by resolution authorize the auditor to draw new warrants within the limitations prescribed by the resolution without prior individual order of the governing body, provided the limitations prescribed by this section have been complied with. The new warrant shall be subject to the same limitations as the original warrant which it replaces.

If, at any time after a period of two years from the date on which the original warrant became void, or during such other period of time as specified by ordinance, the payee or assignee presents such warrant to the governing body of the agency on which the warrant was drawn, the governing body may adopt an order instructing the county auditor to draw a new warrant in favor of the payee or assignee in the same amount as the original warrant, or the governing body, by resolution, may authorize the auditor, without prior individual order of the governing body, to draw warrants within the limitations prescribed by the resolution in any case in which the auditor determines that it would be inequitable or unreasonable not to draw the warrant, and money is available in the county treasury to make payment on the indebtedness. If the auditor deems it necessary, he or she may present a voided warrant to the governing body for its review, approval, and appropriation of funds. Any such new warrant shall be subject to the same limitations as the original warrant which it replaces.
When payee has the original warrant:

REFERENCE

1. The district sends the Commercial Warrant Audit Unit a written request to reissue and provides the following information:

   - Payee/vendor
   - Original warrant number
   - Issue Date (date signed by County Superintendent of Schools)
   - Amount
   - Fund
   - The original warrant **must** accompany the request.

2. The Commercial Warrant Audit Unit prepares a Petition for Issuance of a New Warrant in Lieu of Void Warrant and forwards it to the district along with instructions for completion.

3. The district:

   - Obtains payee's signature on Part 1 of the Petition
   - Obtains district board action/approval and completes Part 2 of the Petition
   - Returns the completed petition to the Commercial Warrant Audit Unit

ON-LINE Districts (Series 14 Warrants)

When the County Office receives verification from the County Auditor that the original warrant has not been paid by the County Treasurer and has not been previously reissued, the County Office notifies the district. The district:

- Inputs information to generate a new commercial warrant
- Keeps copies of the Petition, memo, and board approval as backup documents in lieu of an invoice

OFF-LINE Districts (Series 11 Warrant):

- When the County Office receives verification from the County Auditor that the original warrant has not been paid by the County Treasurer and has not been previously reissued, the County Office notifies the district. The district:
- Prepares a commercial warrant and warrant register
- Keeps copies of the Petition, memo, and board approval as backup documents in lieu of an invoice

GC §29802

<u>When payee claims original warrant was lost, destroyed, or never received</u>:

When the payee of a school district warrant claims the warrant was lost, destroyed or never received, AND the warrant has been voided for age, the governing board may be petitioned to issue a new warrant.

1. The district sends the Commercial Warrant Audit Unit a written request to reissue and provides the following information:

   - Payee/vendor
   - Original warrant number
   - Issue Date (Date warrant was signed by the County Superintendent)

REFERENCE

- Amount
- Fund

2. The Commercial Warrant Audit Unit contacts the County Auditor to verify that the original warrant has not been cashed or a replacement issued.

3. If the original warrant has not been cashed, the Commercial Warrant Audit Unit prepares and forwards the following forms to the district for appropriate action:

   - Petition for Issuance of New Warrant in Lieu of Void Warrant
   - Affidavit to Obtain Replacement of Lost or Destroyed Warrant
   - Instructions for Completing Affidavit and Petition

4. The district:

   - Obtains the payee's signature on Part 1 of the Petition and has payee complete and sign the Affidavit
   - Obtains the district board action/approval and completes Part 2 of the Petition
   - Returns Petition AND Affidavit to the Commercial Warrant Audit Unit

Lost Warrant Process: On-Line Districts (Series 14 Warrants):

When the County Office receives verification from the County Auditor that the original warrant has not been paid by the County Treasurer and has not been previously reissued, the County Office notifies the district. The district:

- Inputs information into PeopleSoft to generate a commercial warrant
- Keeps copies of the Petition, Affidavit, memo, and board approval as backup documents in lieu of an invoice

Lost Warrant Process: Off-Line Districts (Series 11 Warrant):

When the County Office receives verification from the County Auditor that the original warrant has not been paid by the County Treasurer and has not been previously reissued, the County Office notifies the district. The district:

- Prepares a commercial warrant and warrant register
- Keeps copies of the Petition, Affidavit, memo, and board approval as backup documentation in lieu of an invoice

Warrant Stock

On-Line Districts (Series 14 Warrants):

The warrant stock for on-line districts is provided by the County Office of Education and uses a standardized format. The warrants, listing sheets, and warrant registers are printed and signed at the County Office and are forwarded to the district. The district affixes the signature of its designated official authorized to sign school district orders (commercial warrants).
Off-Line Districts (Series 11 Warrants):

The warrant stock for off-line districts is ordered and controlled by the Financial Accounting Unit in conjunction with the County Office Graphics Unit. The format must adhere to prescribed banking specifications. There is some flexibility in the format of the warrant

REFERENCE

stock with regard to the warrant size and the placement of the County Superintendent of School's signature. Off-line districts will be assessed a fee for their warrant stock in accordance with the fee schedule adopted annually by the County Board of Education. Off-line districts wishing to change the format of their warrant stock should allow ample time to coordinate ordering, printing and bank testing.

All warrant stock must be accounted for by warrant number to the County Auditor. Off-line districts changing warrant stock must forward all unused stock to the Financial Accounting Unit to be certified before destroying.

REFERENCE

PART THREE: AUDIT REQUIREMENTS

GC §53060

SPECIALIZED SERVICES

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 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.

Accountants / Auditors

Authority

EC §41020, §84040

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

A standard legal counsel contract is available for district use http://www.sdcoe.net/business-services/financial-services/Documents/form/k-12-audit-contract.doc; however, the district may devise a separate form or may choose to use an agreement prepared by the audit firm. 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/

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. District Financial Services 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.

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.

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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, §81138

GC §4525-§4529.5

Architects / Engineers

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 on 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.

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.
The professional services contract must include the following items:

- Type of professional services to be rendered; e.g., "Architectural Services, Learning Resources Center, Big Red 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.



Minimum Documentation for Audit

- Copy of fully executed contract, including payment provisions
- Board approval date
- Invoice, preferably signed by district official
- Payment for completion of working drawings (final plans) requires the following approvals:
  - California Department of Education (school districts only—not required for districts with city boards)
  - Community College Chancellor's Office (community college districts only)
  - Division of the State Architect (DSA)
  - Governing Board acceptance of final plans (excerpt)

EC §81837

EC §17297 §81134

- The final payment requires:
  - Division of the State Architect (DSA) approval of construction or release of payment
  - Release of claims from architect

21CCR §32

REFERENCE

Attorneys / Legal Services

Authority

GC §53060

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

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:

- 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 not to exceed five years.
- 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.

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
- Invoice, preferably signed by district official

Construction Management

Authority

EC §17070.98
GC §4525 et seq.
PCC §20110 et seq.
PCC §20650 et seq.

School districts are allowed to hire a construction manager ("CM") to assist with the district's management of a construction project if the district does not have any employees who possess adequate experience.

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.

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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.

All contracts with trade contractors are between the school district and the trade contractors. The construction management firm is not a party to these contracts.

REFERENCE

Accordingly, payments for work performed by the trade contractors should be made directly to the contractor, not the construction management firm. School districts procure the trade contractors pursuant to the competitive bidding requirements in the Public Contract Code.

78 Op. Atty. Gen. 48. (Opinion No. 94-819)

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.
A state or local agency may not 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.

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.

Minimum Documentation for Audit

- Fully executed contract, including detailed payment provisions
- Board approval date
- Invoice, preferably signed by district official
- Board-approved Change Orders
- Bid Form
- Proof of DIR Certification
- Notice of Completion

✓

Financial Services

Authority

Districts may hire a financial advisors for debt instrument 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 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

General obligation (G.O.) bonds are debt instruments backed by the full faith and credit of

REFERENCE

California School Accounting Manual, Procedure 705

the issuing government. G.O. 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 (TRANs) are short-term debt instruments issued in anticipation of taxes or other revenues to be collected at a later date. They are used to finance temporary cash flow shortfalls arising from the normal mismatch between the timing of expenditures and the receipt of 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 money 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 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

- Board approval
- Copy 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.

REFERENCE

Minimum Documentation for Audit

Ongoing, routine payments for property and liability, workers' compensation and health and welfare benefits generally will not be selected for audit. Payments for supplemental plans, however, are routinely audited. Required documentation includes:

- Excerpt from the governing board minutes giving approval for the specific plan. Include 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).

IRS Publication SWC 40
(out of print)

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 a 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.

IRS Publications 15-A and 1779

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

EC §44800 - §45060
EC §87000 – §87833
EC §45100 – §45451
EC §88000 – §88263

Refer to the “Independent Contractor District Guidelines” in the Reference section for a list of factors used to determine employee versus independent contractor status. The Commercial Warrant Audit Unit will utilize 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.
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 Search box.)

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

Education Code provides that services by individuals as specified in referenced sections

REFERENCE

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.

AB 5 and the ABC Test

AB 5
LC §2750.3

California Assembly Bill 5 (AB5) is legislation signed into law in September 2019. It went into effect on January 1, 2020 and required companies that hire independent contractors to reclassify them as employees, with a few exceptions.

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AB5 places the expansion of the Dynamex ruling on a statutory footing by inserting section 2750.3 to the California Labor Code, and, as a rule, puts the burden of proof on employers to show that a worker is properly classified as an independent contractor by conducting a three-pronged test known as the ABC Test. The ABC Test presumes that all workers are employees, **unless the employer can prove all 3 parts of the ABC Test**.

The ABC Test:

A. Worker is free from control and direction of the entity in connection with performance of work; **and**
B. Work performed is outside the usual course of the entity's business; **and**
C. Worker is customarily engaged in an independently established trade.

Part A – Degree of Control

- Is the worker free from the control and direction of the entity in the performance of work? Both contractually and actually?
- Typically entity tells independent contract *what* work to perform, and independent contractor decides *how* to perform work
- Does entity exercise same type and degree of control over worker as its employees?

Part B – Work Outside Usual Course of Business

- Does the worker perform work that is outside the entity's usual course of business?
- Individuals are employees if they are reasonably viewed as providing services to the business in a role comparable to that of employees.

Part C – Worker Has Own Business

- Is the worker customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the entity?
    - Does the worker have multiple clients?
    - Incorporated as a business?
    - Markets to other entities?
    - Own an office? Business cards?
    - Uses own tools and equipment?

Exemptions to AB 5:

- Insurance agents
- Medical professionals (physicians, psychologists)

REFERENCE

- Licensed professionals (attorneys, architects, engineers, private investigators, accountants)
- Financial advisors
- Direct sales salespersons
- Construction contractors
- Some contracts for professional services for marketing, human resources, graphic designers, grant writers, fine artists, photographers
- "Business service providers"

Permissible Personal Services Contracts for K-12 and Community College Districts:

- To achieve cost savings under very specific conditions;
- Where a contract is mandated by the Legislature;
- When certain services are not available within the District;
- When the services are incidental to a contract for the purchase or lease of real or personal property;
- Where the contract is necessary to accomplish certain policy, administrative or legal district goals and purposes, and are necessary to protect against conflict of interest or to ensure independent and unbiased findings;
- For emergency appointments, not to exceed 60 working days;
- When equipment or materials are not available from the district; or
- When the services are of an urgent, temporary, or occasional nature.

Reporting Requirements

There are specific reporting requirements for independent contractors:

Employment Development Department (EDD)

Independent Contractor reporting link:
https://www.edd.ca.gov/Payroll_Taxes/Independent_Contractor_Reporting.htm

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 must withhold seven percent (7%) of gross payments made in excess of $1,500 in a calendar year to non-resident independent contractors.

Fingerprinting

EC §45125.1 – §45125.2

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:

- School and classroom janitorial
- School site administrative
- School site grounds and landscape maintenance

REFERENCE

- 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.

A school district may determine, on a case-by-case basis, to require an entity providing school site services other than those listed above or those described in Section 45125.2 and the entity's employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils.

A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited 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 ascertained has not 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 the 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 utilized.

Internal Revenue Service Form 1099-MISC

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.

Minimum Documentation for Audit

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

REFERENCE

Lecturers

Authority

EC §35161
EC §70902

"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."

The president of any community college district is also authorized to employ lecturers in the same manner.

✓

Minimum Documentation for Audit

- 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

Inspectors (Division of State Architect)

Authority

EC §17295 et seq.
EC §81130 et seq.

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, Division of State Architect (DSA). A list of certified DSA school construction inspectors may be accessed via the DGS web site at: www.dgs.ca.gov (Select Project Tracking, School Construction Inspectors)

"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, if the estimated cost exceeds $25,000, the alteration of any school building.

24 CCR §33(b)

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.

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.

The contract must include the following items:

- Type of contract, including the professional services to be rendered; e.g., "inspection services for (name of project)"
- Term of contract
- Payment provisions: may be based on a monthly fee including expenses
- SB 854 language (DIR registration requirement)

REFERENCE

Minimum Documentation for Audit

- Full executed agreement
- Board approval date
- Proof of DIR Certification
- Invoice, approved by district official responsible for oversight of project

Food Service Management Consultants

EC §45103.5

Authority

CDE Nutrition Services Division Management Bulletin 04-2011

School districts may enter into a contract for certain 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, and preparation of application materials.

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.

CDE Management Bulletin 98-108

A contract for food service management consulting services shall not cause or result in the elimination of any food service classified personnel or position.

A consultant may not 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 http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp guidance and additional resources links.

The contract should address the following issues:

- 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

Minimum Documentation for Audit

- Fully executed copy of agreement, including authorized official signatures
- Board approval date
- Invoice, preferably signed by district official

REFERENCE

LEASES

Lease or Lease-Purchase: Equipment (Personal Property)

Authority

EC §17450
EC §81550

"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 of any item and also its total cost for the entire specified term of the contract."

EC §17452
EC §81552

EC §17453
EC §81553

"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 percent 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."

California Constitution, Article XVI, section 18

"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."

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These contracts are subject to competitive bidding provisions.

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…" County Counsel has advised that without an election, public agencies are without authority to enter into an installment sales contract.

REFERENCE

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: Example:

> "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, a non-appropriations clause, should be included by the district before the agreement is executed for multiple years.

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Assignment of Contract

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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

REFERENCE

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.
- Non-funding/termination (Non-appropriations) clause, if agreement is for multiple years.

✓

Minimum Documentation for Audit

- 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

Lease or Lease-Purchase: Relocatables

Authority

PCC §20111
PCC §20651

These contracts are subject to the competitive bidding provisions for public projects ($15,000 labor and materials). The total amount of the lease should be considered for bidding requirements. The term of any lease or agreement shall not exceed 40 years.

EC §17403

Any lease or agreement shall be subject to the following requirements:

EC §17405
EC §17285

- 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.

"Relocatable structure" is any structure that is designed to be relocated.

EC §17405(c)

EC §17070.15

"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 walls, has a floor area not in excess of 2,000 square feet.

REFERENCE

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. Monthly or annual payments 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

Lease/Rental of Facilities

Authority

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

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.
- 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.

REFERENCE

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

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 San Diego County Tax Assessor's Office, using Form BOE 268-A which is available on-line at https://arcc.sdcounty.ca.gov/Documents/268APUBSCH.pdf

✓

Minimum Documentation for Audit

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

REFERENCE

PERSONNEL SERVICES

Security Services

EC §38005

Authority

School districts *(including merit system 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.



EC §45103.1
EC §88003.1

Merit system school districts may invoke this provision only if the governing board, "by a majority vote makes a specific finding that an emergency exists." This finding must be included in the governing board's minutes.

SB 1419, effective January 1, 2003, limits the flexibility that school and community college districts have to choose between permanent employees or contractors.

Contracted services are subject to competitive bidding provisions ($50,000 (as adjusted annually by the Superintendent of Public Instruction)). Continuing contracts for services may not exceed a term of five years.

The contract must include the following items:

- 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

Minimum Documentation for Audit



- Fully executed contract with authorized signatures and payment provisions
- Board approval date, including excerpt from board minutes with specific finding that an emergency exists (*merit system* districts only)
- Invoice, preferably signed by district official

EC §45103.1
EC §88003.1

Temporary Office Services

Authority

EC §45256
EC §38005
EC §88003

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.

GC §53060

Education Code §45256 specifically prohibits *merit* system districts from subcontracting out for temporary services outside the classified service unless a specific statute exists; e.g., districts may contract for security services under EC §38005 or "special services" under GC §53060.

REFERENCE

EC §45140

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 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.

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.

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

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

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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

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

REFERENCE

EC §56366

Non-Public School/Non-Public Agency

Authority

EC §39806

Before any non-public school agreement is sent to the Commercial Warrant Audit Unit, 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. Countywide rates are negotiated on an annual basis. Contracts not negotiated by the start of the new years are subject 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.

<u>Minimum Documentation for Audit:</u>

- 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
  Invoice, preferably signed by district official

Joint Use Agreements

State Allocation Board "Public Construction Cost Reduction Guidelines"

EC §10900 et seq.
GC §6500 et seq.

Authority

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."

Typical joint use projects include multipurpose rooms, libraries, gymnasiums, parks,

REFERENCE

playgrounds, or any other type of facility that can be used by both the district and the community.

Components of a joint use agreement may include the following:



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

Minimum Documentation for Audit

- Copy of fully executed joint use agreement, including payment provisions
- Board approval date
- Invoice signed by district official responsible for the agreement

REFERENCE

Transportation: Students

EC §39800

Authority

EC §39802
PCC §20111

"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."

Best Best & Krieger Legal Opinion August 2010

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, 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.*

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

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 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. 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 judgment 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. Id. at p. 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. Id. at p.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.

REFERENCE

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.
- 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

NON-CONSTRUCTION SERVICES

PCC §20111
PCC §20651

Non-construction services are subject to competitive bidding provisions ($50,000, as adjusted annually by the Superintendent of Public Instruction). 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.

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 <u>non-merit</u> 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 a contract for personal services, the issue would be negotiable if the purpose of entering into such contract is to save labor costs.

EC §45256

EC §38005
GC §53060

The Education Code specifically **prohibits <u>merit</u> 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

<u>Non-merit</u> 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.

Landscape maintenance service contracts are subject to competitive bidding if the cost exceeds $50,000 (as adjusted annually 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.

REFERENCE

The contract must include the following items:

- 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.), 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, with authorized signatures
- Board approval date
- Invoice signed by district official responsible for overseeing the services
- Proof of DIR Registration

Maintenance and Repairs

Authority

PCC §20111
PCC §20651
PCC §20656

These contracts are subject to competitive bidding provisions. 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 $50,000 (as adjusted annually by the Superintendent of Public Instruction).

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 $25,000).

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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

Minimum Documentation for Payment

- 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

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

REFERENCE

other governmental agencies, subscriptions, payments on leases of real property, and maintenance of equipment (former EC §40013). Since that EC section 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 such equipment, sufficient information to identify the equipment being maintained should be included for auditing 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

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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.ca.gov/risk-assessment/art-hazards

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.

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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:
http://www3.cde.ca.gov/impricelist/implsearch.aspx

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 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

REFERENCE

Cafeteria: Capital Improvements and Equipment

Authority

EC §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 project and equipment.

EC §38100 — The cost of facilities and initial equipment for cafeterias may be paid from the General Fund, Building Fund, or other fund from which such capital outlay may be legally paid. Repairs and alterations to buildings (excluding food processing plants) and 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.

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 CDE Nutrition Services Division Management Bulletin MSD-SNP-07-2013 at the following website:
www.cde.ca.gov/ls/nu/sn/mbnsdsnp072013.asp

Minimum Documentation for Audit

✓
- 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#.
- 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 the Superintendent of Public Instruction), governing board excerpt showing bid summaries and award of bid.
- Invoice or payment application.

Cafeteria: Food

PCC §20660
EC §38083 — Authority

CDE Management Bulletin NSD-SNP-03-2008 — 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 as 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 long than seven calendar days under normal shipping and storage conditions.

REFERENCE

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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 limit for goods and services.

EC §35182.5(a)

Note: The California Education Code exempts perishable foods from competitive bidding; however, federal requirements call for competitive bidding when the purchase cost exceeds $150,000 or the state bid limit if it is more restrictive.

A food service management consultant hired by the district may not 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.

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/

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Minimum Documentation for Audit

- Purchase order
- Certification of compliance with bidding requirements, if applicable
- Invoice

Capital Outlay

Authority

California School Accounting Manual, Procedure 770

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.

EC §35168

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.

For purposes of this Commercial Warrant Claims Manual, "capital outlay" refers to those items that are inventoried.

PCC §20111
PCC §20651

Capital outlay (equipment) must be competitively bid if the purchase exceeds $50,000 (as adjusted annually by the Superintendent of Public Instruction). Issues unique to the purchase of some capital outlay items are identified below:

REFERENCE

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 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:

EC §17542

- The selling price and terms of sale shall be fixed by the governing boards of the school districts effecting the sale and be approved by the county superintendent of schools.

EC §42303

- 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.

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

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

Districts may procure by a 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."

Data Processing Systems and Supporting Software

PCC §20118.1
EC §81645

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 that fact in the bid documents and should refer to Public Contract Code section 20118.1.

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

PRC §42460-§42461

Electronic Waste (E-Waste) Recycling Fee

HSC §25214.9

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

REFERENCE

et seq.

computers (CRT and LCD), 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: www.2.calrecycle.ca.gov/electronics/erecycle for an up-to-date list of approved computer recyclers that accept materials covered by the new fee.

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 copy of approval letter.
- Invoice or payment application

First Aid Supplies

Authority

EC §49423
EC §49480

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.

Except as provided for above, it is not permissible to furnish medication, including aspirin, to students except as first aid in emergency situations. To assist school districts in determining which first aid items are appropriate to purchase, the County School Nurse Resource Group has compiled an "Approved First Aid Supplies" list. The list is included in the reference section of this manual. The full Emergency First Aid Guidelines for California Schools Manual may be found at:
https://emsa.ca.gov/wp-content/uploads/sites/71/2017/07/EMSC_Interactive_Final.pdf

✓

Minimum Documentation for Audit

- Purchase Order (for approved items only)
- Invoice

Fuel

Authority

PCC §20111
PCC §20651

Motor vehicle fuel is subject to the competitive bidding limit of $50,000 (as adjusted annually by the Superintendent of Public Instruction). 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:

RTC §60039

REFERENCE

Taxes/Fees	Current Rates
Sales and District Taxes	7.50% plus applicable district taxes
State Fuel Excise Tax (Motor Vehicle Fuel)	$0.417 per gallon
State Fuel Excise Tax (Diesel Fuel)	$0.036 per gallon*
Federal Excise Tax	Exempt

*School districts currently receive a reduced rate for the State 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 $50,000 (as adjusted annually by the Superintendent of Public Instruction)
- Purchase order or purchase agreement
- Invoice (with appropriate taxes applied)

General Supplies & Materials

Authority

PCC §20111
PCC §20651

Contracts involving an expenditure of $50,000 (as adjusted annually by the Superintendent of Public Instruction) 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; per fiscal year for one-time purchases or multiple years for recurring purchases.

Most local school districts are members of the North County Educational Purchasing Consortium (NCEPC) which was established as a separate, legal entity in 1985 for the purposes of organizing cooperative bidding and purchasing among San Diego County school districts. Individual participating school districts administer contracts on behalf of the Consortium. Some of the items which are bid by the Consortium are: art supplies, audiovisual equipment, bottled water, computers, copiers, custodial supplies, copier supplies, office and classroom supplies, pagers, paper, printers, and science supplies. More information about the Consortium and a complete list of current bids may be found on their web site: www.ncepc.org

EC §38110

The Consortium cooperative purchasing contracts 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.

LC §2671 et seq.

CCR, Title 8, §13630

*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, hats, gloves, etc. The Division of Labor Standards Enforcement maintains a database which may be accessed at:*
www.dir.ca.gov/databases/dlselr/Garmreg.html

REFERENCE

Minimum Documentation for Audit

✓

- Purchase order with NCEPC-referenced bid numbers, as applicable
- For non-NCEPC bid items, provide excerpt of approved governing board item awarding the bid
- Invoice

Surplus Personal Property

EC §17540 et seq.

Authority

"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 §17602
EC §81653

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 Sale

EC §42303

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:

- 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.

EC §42303

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

REFERENCE

contains the specified conditions of the sale
- Invoice

Utilities

PCC §20111
PCC §20651

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 $50,000 (as adjusted annually by the Superintendent of Public Instruction). Local districts which are members of the North County Educational Purchasing Consortium (NCEPC) may utilize the contract awarded by the NCEPC to the lowest bidder. Note: Districts may not piggyback on another agency's bottled water service.

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.

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.

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

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. Note advertising in a newspaper of general circulation is required when purchasing above the bid limits. 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

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

REFERENCE

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.

Minimum Documentation for Audit

- Purchase order or service agreement and NCEPC-referenced bid number, if applicable
- If bid limits are exceeded, excerpt from governing board minutes approving bid award
- Invoice

REFERENCE

OTHER EXPENDITURES TYPES

Advance Payments

Authority

EC §35161

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, 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.

Minimum Documentation for Audit

- Fully executed copy of authorizing document, if applicable, e.g., lease or maintenance agreement with payment provisions
- Invoice

Awards – Non-Employee

EC §35160
EC §70902

Community Member Recognition (Non-Employees)

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 for 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.

Awards – Employee/Pupils

EC §44015
EC §70902

The governing board of a school district may make awards to employees who do any of the following:

- 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.

The governing board of a school district may make awards to pupils as follows:

- The governing board of a school district may make awards to pupils for excellence.

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

REFERENCE



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.

EC §44015

Any award granted under the provisions of this section **shall not exceed two hundred dollars ($200)**, unless a larger award is expressly approved by the governing board.

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

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 of 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, Thieves

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 ten thousand dollars ($10,000), adjusted annually for inflation. The annual adjustment is issued by the Superintendent of Public Instruction in December of each year. For 2019 the amount is $20,300.
See: http://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.

Minimum Documentation for Audit



- Copy of approved board policy
- For employee awards exceeding $200, excerpt from board minutes giving specific approval for the higher award
- Invoice

REFERENCE

California Multiple Award Schedule (CMAS)

Authority

PCC §10290 et seq.
PCC §10298
PCC §10299
PCC §12101.5

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).

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.

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 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.

Districts should consider the following key points regarding the use of the CMAS program:

- 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.
- The agency must develop a 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: https://www.documents.dgs.ca.gov/pd/cmas/SOWinfo(022028).pdf 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 ("the Act")

Authority

PCC §22000 et seq.

Pursuant to Public Contract Code §22000, et seq., by adopting construction cost accounting standards promulgated by the California Uniform Construction Cost Accounting Commission, ("Commission") local agencies, including school districts, may award contracts for public projects work without engaging in a formal bidding process. Projects valued at $60,000 or less may be performed by force account, negotiated contract, or purchase order. Projects valued up to $200,000 may be performed under contracts awarded by the "informal" bid process.

REFERENCE

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 January 1, 2016, SB 184 changed the requirements to maintain a list of contractors as follows:

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

PCC 22034

(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.

PCC §22030 et seq.

The district must review the notice to confirm inclusion of the minimum substantive content prescribed by the Act. These requirements are: (1) general description of the project; (2) how additional information (i.e., plans, specifications, etc.) regarding the project can be obtained; and (3) the time and place for submission of bids. The notice must be delivered by mail and the mailing must be completed at least 10 days prior to the due date for bids.

PCC 22034
EC 17604, 17605

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.
The cost accounting procedures are required only when districts choose to perform public projects with their own employees.

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

Exhibit 10

Districts opting in to CUPCCAA need to submit a copy of the resolution and informal bidding policy to the Commercial Warrants Unit at CommWarr@sdcoe.net

REFERENCE

✓

Minimum Documentation for Audit

- New CUPCCAA Districts: copy of resolution opting into the Act, copy of resolution delegating authority, copy of resolution allowing declaration of emergencies.
- Up to $60,000: Copy of the fully executed contract or purchase order.
- $60,001 - $200,000: Executed agreement, bid form, and board award/ratification date.
- >$200,000: Executed agreement, bid form, and board award/ratification date
- Invoice

Charter Schools

Authority

EC §47601
EC §47610

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."

PCC §20110

Public Contract Code §20110 requires competitive bidding only "to contracts awarded by school districts." A legal opinion issued for the San Diego County Office of Education states that "the plain language of EC §47610 exempts charter schools 'from the laws governing school districts,' thus in our opinion exempting charter schools from the public bidding requirements of PCC §20110." The legal opinion goes on to state: "Thus, if a school's charter has been approved by the district and money has been allocated it is our opinion that the charter school has the discretion to spend funds and select contractors as the school sees fit without interference from the district."

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Although a charter school is a separate entity separate 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 Commercial Warrant Audit Unit 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 commercial warrant 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.

REFERENCE

Other Agency Bids (Piggyback Bids)

Authority

Pub. Cont. Code §§ 20118, 20652, 20653; Gov't Code § 14931

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. **Note: There is no authority in Public Contract Code allowing "piggybacking" on service contracts.**

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.

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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. "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."

Joint Powers Agency Purchasing Agreements

GC §6500 et seq.

School districts and community colleges may enter into joint powers agreements to establish a Joint Powers Agency ("JPA") to purchase equipment, materials, and supplies. (Govt. Code § 6500, et seq., 15 Op. Atty Gen. 108 (1950)) The governing board of each public agency to be a member of the JPA must approve the formation of the JPA. The administration of a JPA is typically governed by a joint powers agreement. The agreement should include the relationship between the public agencies, the manner in which it will purchase equipment, materials and supplies, and how costs will be shared among the member districts. Please note that the California Attorney General has issued an opinion clarifying that a JPA cannot delegate purchasing to a private company on behalf of the JPA. (71 Op. Atty Gen. 266, 275 (1988). More and more JPAs are being formed for purchasing purposes, and some believe that the JPA need not comply with the Public Contract Code. It is important to remember that public agencies that are party to a JPA may only exercise powers that are common to them. Gov. Code, § 6502. Thus, a JPA made up of school districts would generally be subject to the same legal requirements as each individual member, including the Public Contract Code.

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San Diego County school districts may purchase from other public agency contracts including JPAs without going to bid if the following requirements are met:

- District must determine whether the piggyback bid is the best vehicle to obtain the desired goods. This is accomplished by comparing it to other bids offering the same or equivalent goods and by ensuring that bidding the goods would result in a higher

REFERENCE

cost.

- 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]."



- For JPA or Consortium bids, the District must meet the requirements to participate in the JPA or Consortium and take board action to if membership is required.
- 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 for goods and labor is over $25,000.



Minimum Documentation for Audit:

- Copy of contract between vendor and awarding agency (with piggyback clause)
- Advertisement
- Bid form
- Addenda
- 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

Authority

EC §35160
EC §70902

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

REFERENCE

- 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 cards)
  - Card revocation
  - Define process to ensure use taxes are recorded and paid from credit card transactions
  - 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 the credit cards (i.e., received at district warehouse or school site, not delivered to personal residence)
  - Cardholder Agreements

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

EC §35160
EC §70902

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

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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 the credit cards (new account or upon request).
- Itemized credit card/procurement card invoice that contains an **adequate description and purpose** of the purchase. Merely stating "supplies" is not sufficient. The individual identified as being responsible for the account must review the invoice and supporting documentation, and certify that all expenditures have been reviewed for compliance with board policy and administrative regulations and supporting receipts are on file at the district office.

✓

REFERENCE

NOTE: The Commercial Warrant Audit Unit may conduct an additional audit and require supporting documentation/receipts for specific purchases. To prevent delays in approving and releasing the warrant, it is imperative that the supporting documentation be readily available.

Late Fees, Finance Charges, Installment Sales, Interest

Authority

California Constitution, Article 16, Section 18

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 two-thirds of the qualified electors thereof…"

Finance Charges, Installment Sales, Interest



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 (i.e., credit cards).

EC §17450

Leases and lease-purchases 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; and (3) each payment is for the consideration actually furnished during that period. Similarly, Certificates of Participation (COPs) do not violate the Constitution because they provide long-term financing through a lease with an option to purchase.

Late Fees

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 (i.e., payment due within 30 days or 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

Memberships / Dues

Authority

There is no specific authority to use district funds for pay for 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.

REFERENCE

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 the 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

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:

Deceased Employee

Wages (including any retroactive pay) paid in the calendar year *following* the employee's death are paid on a 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 earning in Box 3.

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

Errors/ACH

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 purposes and the funds were returned to the district, the employee needs to be paid via a commercial warrant or a revolving cash fund check.

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 five workdays following the determination. Such payment may be made via a 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)

REFERENCE

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 Military 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 a commercial warrant and are reported on Form 1099-MISC if they are $600 or more in a calendar year.

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.

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

Interest-Late Salary Payments for K-12 Certificated Employees

EC RTC 19521

Effective January 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 timely, proper documentation. 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 of salary 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 is paid.

IRC 6621
§45048-9

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

The interest rate is <u>not</u> considered salary and should be made through a 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.

Overage Payroll Warrants

Warrants, including payroll warrants, are voided by the County Auditor after a period of six (6) months. The County Auditor automatically voids overage 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 a Series 11 or 14 Commercial Warrants. To replace an overage payroll warrant, the district should contact the Payroll Unit to obtain the necessary paperwork.

Performance Awards

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

Occasionally, school districts receive funding from the State to pay certain employees an award or bonus based on performance. Some past examples include the Governor's Performance Awards, Site/Staff Performance Awards, and Certificated Staff Performance Bonuses (Note: These are <u>no</u> longer funded). <u>When such payments are to be made, they MUST be processed through payroll</u>.

CA Unemploy-ment Insurance Code, §926 and

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

REFERENCE

§13009

wages subject to federal and state tax withholding, Social Security and Medicare as applicable to the employee, unemployment, and workers' compensation.

Referees/Umpires/Officials

County Counsel Opinion Dated 9/25/95

Referees and umpires hired by a school district or the Associated Student Body (ASB) to referee or umpire California Interscholastic Federation (CIF) 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 ASB, 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 (i.e., 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 document requesting payment that shows how calculation was made (i.e., request from Payroll Department to Finance/Accounts Payable).
- ACH returns: a copy of the bank notice rejecting the transaction and 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.

IRC 104(a)

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 provides an exclusion from income tax liability **only** for **compensatory** damages which are received on account of *personal physical injuries or physical sickness*.

REFERENCE

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.

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Districts are urged to use extreme caution in entering into settlement agreements that 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.

Employment Contracts -Termination

GC §53260 et seq.

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 September 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.

GC §53260(a)(2)

In the case of a district superintendent of schools, for contracts of employment executed on or after January 1, 2016, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 12.

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 FICA, 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.

Settlement Payments (Legal) – Special Education

Authority

Special Education

CDE Legal Advisory Dated March 17, 1999

EC §35160

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 (i.e., 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 the reimbursement request is disputed, the parents and the school district settle such disputes either through mediation or a 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 approval should not merely be listed as a purchase order (PO) number on the list of PO's for approval. The action may be placed on the consent agenda indicating:

REFERENCE

"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 parent(s)

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

Limiting Specifications to a Specific Brand or Trade Name (aka "Sole Source" – "Or Equal")

PCC §3400

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.
   (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.
   (B) In order to respond to an emergency 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 the public records of the authority issuing the invitation for bid or request for proposals.

If Exception 1 is utilized to justify the sole source designation, there must be a finding by resolution of the district's governing board authorizing inclusion of a sole source for such field test or experimental purposes. The board's finding and resolution in this regard must be included in the specifications for the project.

REFERENCE



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 from a knowledgeable employee 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 a sole source purchase.

Minimum Documentation for Audit



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

Taxes (Federal Withholding)

Authority

IRC §6109

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.

REFERENCE

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 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)

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

School districts are **exempt** from paying federal excise taxes on all school purchases. This includes fuel, tires, and communication 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 may be been inadvertently paid.

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 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. 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.

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 and Use (State Board of Equalization)

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

1. California Sales Tax – 7.50% (effective 1/1/17) statewide rate for purchases from qualified vendors engaged in business throughout California, or

2. California Use Tax – 7.50% (effective 1/1/17) for purchases from out-of-state vendors.

3. In addition, a district tax is levied in San Diego. **The combined sales and use tax rate in the city of San Diego is 7.75%**. ***Some cities in San Diego County have higher rates.***

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

REFERENCE

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

Sales and Use (State Board of Equalization) cont.

Detailed information is available at the Board of Equalization website: www.cdtfa.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 Commercial Warrants; however, the district should ensure that a complete audit trail exists in the event of an audit by the Board of Equalization.

PUBLIC PROJECTS

PCC §22002(c)

The term "public project" is defined in 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.

The $50,000 (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 and 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

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:

- 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.

Minimum Documentation for Audit

✓

- 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 Districts and Community

Although there is 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 obligations of the contract, the public agency owner can, under the

College Districts“

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:

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

PCC §20111
PCC §20652

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 ten percent 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 ten percent should be permitted.

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

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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 Management

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 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

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. 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.

Best, Best & Krieger Legal Opinion, March 7, 2002

The district may not delegate its legal authority to award contracts or to approve change orders to the CM firm. The governing board is required to award contracts and to approve change orders by agreement.

A district may pay a CM firm in any manner negotiated by agreement. This could include: (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. 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.

Minimum Documentation for Audit

✓

- Fully executed contract, including payment schedule
- Board approval
- Invoice for CM services, approved by district representative

Contractor's License

Authority

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 $500 or more.

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 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.

BPC §7028.15

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. Any contract awarded to a contractor who is not properly licensed is void.

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.

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.

Districts may check the status of a contractor's license online at the CSLB website: www.cslb.ca.gov

BPC §7031

Additional information regarding the laws and regulations pertaining to licensed contractors, including contractor classifications, can be found at the same website.

Minimum Documentation for Audit

- Contractor's license number should appear on the invoice and checked for validity

Contractor Registration and Reporting (PWC-100)

SB 854

LC §17720, LC §1725.5

Effective January 1, 2015: The Notice Calling for Bids and contract documents must include the following information:

- 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.

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.)

SB 96

Effective July 1, 2017, SB 96 increased the registration and PWC-100 reporting limit as follows:

- $15,000 or public project
- $25,000 for maintenance projects

Minimum Documentation for Audit

- Contractor's DIR registration should appear on the invoice and checked for validity or copy of DIR registration attached to voucher

EC §17250.10 et seq.
EC §81700 et seq.

Design-Build Contracts

Authority

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.

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.

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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. The project delivery method requires:

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.

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:

www.cde.ca.gov/re/pn/fd/documents/dbpguidelines.pdf Note: that there have been additional requirements and changes since publication of this guidebook.

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

✓

Minimum Documentation for Audit

- Governing board resolution approving Design/Build method. *
- Governing board written decision supporting its contract award and stating in detail the basis of the award. *
- Fully executed Design/Build contract. *
- Contractor's license number
- DIR registration number or copy of registration

* *Required one-time only at the beginning of the project*

Division of State Architect

Authority

EC §17280-17317, 17365-17374

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.dgs.ca.gov/dsa

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 $106,412* 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.*

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 regulations are being exactly and completely executed. The inspector should approve all payment applications.

A list of certified DSA school construction inspectors may be accessed at the DSA website.

SB 8544

Effective March 1, 2015, DSA inspectors are required to register with the Division of Industrial Relations.

Minimum Documentation for Audit

✓
- DSA application with fee calculation.
- DIR registration number or copy of registration

Eminent Domain ("Condemnation")

Authority

CCP §1240.10-1240.50

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:

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.

GC §7267.2
CCP 1245.210 et seq.

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.

CCP §1255.010 et seq.

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.

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.

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School districts should work closely with their legal counsel throughout the eminent domain process.

Minimum Documentation for Audit

✓
- 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

Labor Compliance Program

https://www.dir.ca.gov/lcp.asp

Authority

Most provisions of the Labor Compliance Programs for schools sunset on July 1, 2012. The following information is directly from the CSLB website:

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

Authority

EC §17406

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."

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:

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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: (1) all workers are either skilled journeypersons or apprentices registered in an approved apprenticeship program and (2) beginning on January 1, 2016, 30% of the skilled journeypersons for each "apprenticeable occupation" must have graduated from an approved apprenticeship program.

Effective January 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.

Notice of Completion

Authority

CC §9200

Before the final payment (retention) is made on a public project, the district's governing board *should* 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.

CC §9356

A Notice of Completion is then recorded with the County of San Diego for the purpose of giving public notice that the final payment will be made following the 30 day 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 90 days.

CC §8102

"Notice of Completion" means a written notice, signed and verified by the owner or his agent, containing all of the following: (a) The date of completion (other than a cessation of labor). (b) The name and address of the owner. (c) The nature of the interest or estate of the owner. (d) A description of the site sufficient for identification, containing the street

address of the site, if any. (e) The name and address of the direct (original) contractor.

CC §9204

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.

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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.

IMPORTANT NOTE: The Notice of Completion does not drive the release of retention. The NOC starts the clock for the Stop Payment Process.

Minimum Documentation for Audit

- Executed copy is only required if district policy calls for an NOC to be recorded or for board acceptance of a project.

Contractor Payments

Authority

EC §17603

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.

PCC §9203

Contracts with school districts for public projects which will exceed a total of $5,000 must provide for the retention of a minimum of 5 percent of any progress payments. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. as well as the 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.

PCC §20104.50

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.
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.

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Minimum Documentation for Audit

- Excerpt from governing board minutes awarding the bid (if project is ≥ $15,000).*
- Copy of fully executed agreement between contractor and school district, including signatures.*
- 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.

**Required one-time only at the beginning of the project.*

Prevailing Wages

LC §1771
LC §1720

Authority

The Labor Code requires that prevailing wage rates be paid to all workers employed on public works projects of $1,000 or more.

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LC §1773.2

Assembly Bill 1598 (Chapter 810) amended section 1720 of the Labor Code, effective January 1, 2013. 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.

LC §1720.3

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: www.dir.ca.gov/DLSR/PWD/index.htm

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."

Relocatables/Portable Buildings

Authority

EC §17405

"Relocatable structure" is any structure that is designed to be relocated.

PCC §20111
PCC §20651

The purchase of relocatable structures falls under the definition of personal property when the installation is incidental and the applicable bid limit is $50,000 (as 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.

Note: Although Attorney General Opinion 05-405 concluded that the purchase of modular buildings to be placed on permanent foundations 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.

Minimum Documentation for Audit

✓

- Board minutes excerpt approving award of bid. *Note: If utilizing another public agency's cooperative bid, provide: 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, Invoice, preferably signed by district official approved by authorized district representative

Retention

Authority

PCC §9203

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 §9203

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.

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PCC §7201

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.

PCC §22300

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.

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Escrow and Securities in Lieu of Retention

GC §16430

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 thrift 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.

PCC §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 §22300

Releasing Retention

PCC §7107

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 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 <u>should</u> 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.

<u>Minimum Documentation for Audit</u>



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

<u>For securities in lieu of retention</u>: 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.

Site Purchase

EC §17212

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 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

Authority

CC §9350-9352

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.

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.

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 §9350 et seq.

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 §9356

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 (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.

CC §9358(a)

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 §9364

CC §9400, et seq.

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 §9502

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.

PCC §10240, 20104

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.

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.

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 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.

CC §9200

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

- ❑ Filed by _____ Date received _____
- ❑ Against (Contractor and License No.) _____
- ❑ Amount (Record amount plus litigation costs) $_____
- ❑ Contract amount payable $_____
- ❑ Withheld from payment application # _____
- ❑ Was Stop Payment Notice filed by a subcontractor named with the bid?
- ❑ If no, was "Preliminary Notice" received within 20 days of the start of the work subject to the Stop Payment Notice?
- ❑ Stop payment notice Release received from claimant 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 funds from payment applications for public works for Stop Payment Notices, provide a copy of the Stop Payment Notice and district checklist that specifies pertinent information included in above sample.

REFERENCE

REIMBURSEMENTS & REVOLVING CASH FUNDS

Associated Student Body (ASB)

EC §48930

Authority

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.

EC §48934

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

EC §48938

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 §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.

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EC §48933

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

- A federally insured bank and thrift (FDIC)
- 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 San Diego Treasury, the governing board is the controlling authority for all funds of the student body. Additionally, the funds are subject to an annual audit by the school district's external

REFERENCE

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 a 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

REFERENCE

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.

Minimum Documentation for Audit

✓

- Invoice and receipts for reimbursement indicating "employment candidate," preferably signed by district official

Mileage Reimbursement

EC §35160

Board Members

Authority

A mileage payment to a board member must be supported by a statement or claim containing the following:

1. Board member name
2. Date(s) of board meeting(s) attended
3. Start and stop locations
4. Rate of reimbursement
5.

REFERENCE

✓

Minimum Documentation for Audit

- Board policy
- Invoice/mileage claim

Employee Mileage Reimbursement

Authority

EC §44033

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:

1. Employee's name
2. Period covered
3. Start and stop locations (excluding miles due to personal use)
4. Rate per mile
5. Amount

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.

Minimum Documentation for Audit

- Board policy and/or excerpt of contract (for monthly stipend)
- Mileage claim/invoice and supporting documentation (Mapquest / Google Maps)

✓

IRS Publication 17

Note: Employees that do not have a permanent job location must be given a designated main place of business:

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.

- The total time you ordinarily spend in each place.
- The level of your business activity in each place.
- 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

Authority

EC §39806

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

REFERENCE

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.

Districts should enter into a signed contract with the parents or guardian which specifies the amount of reimbursement, including the total number of miles per day that will be reimbursed. Additionally, the district should require proof of car insurance from the parents or guardian.

✓

Minimum Documentation for Audit

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

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Internal Revenue 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

Moving Expenses

Authority

EC §35160

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.

REFERENCE

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.

IRC §132

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:
https://apps.irs.gov/app/picklist/list/formsPublications.html

✓ **Minimum Documentation for Audit**

- Board approval of moving expense reimbursement
- Invoices and/or receipts from employee or third party

Refunds

Developer Fees Refunds

Authority

EC §17620 et seq.

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

REFERENCE

Student Fees

Authority

CCR5 §530
EC §39807.5

"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.

CDE Fiscal Management Advisory 12-02

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)

Authority

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

School districts may establish and operate a revolving cash fund to relieve the 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 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.

REFERENCE

10. Dual signatures are advisable but are not legally required.

Revolving Cash Funds – Types

Standard RCF (EC §42800-5)

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 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 a 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.

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.

Education Code 42800(b)(2)

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.

Instructional Materials RCF (EC §42810)

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

REFERENCE

governing board prescribes. The RCF shall be established by submitting to the county superintendent of schools a 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.

Purchase Limit: None, unless prescribed by the governing board.

EC §42810

Uses: 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).

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. Joe Principal, Custodian, Revolving Cash Fund, _____ School District. The RCF custodian should sign the reimbursement register.

REFERENCE

EC §42820

Prepayment Fund (EC §42820)

Establishment: The governing board may establish a revolving cash fund for the purposes of paying bills as prescribed in EC §42821.

EC §42821

Fund Limit: 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.

Purchase Limit: $1,000 Note: the check is to state on its face that it is not valid for more than $1,000.

Uses: 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.

EC §42821

Reimbursement: 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. The RCF custodian should sign the reimbursement register.

EC 38091 amended (Cafeteria RCF)

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.

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Minimum Documentation for Audit (ALL RCF's)

- 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. This should be approved and signed by the RCF Custodian.

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Note: It is not necessary to submit all itemized invoices and receipts at this time; however, documentation may be requested for individual disbursements after review of the list/register.

REFERENCE

TRAVEL & CONFERENCES

Admission Fees

CCR, Title 5, §350

Authority

EC §35330

"A pupil enrolled in a 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. 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.

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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://apps.irs.gov/app/picklist/list/formsPublications.html

Also refer to the IRS Publication 15-B, "Employer's Tax Guide to Fringe Benefits" at:
www.irs.gov/pub/irs-pdf/p15b.pdf

REFERENCE

✓

Minimum Documentation for Audit

- Travel authorization document which includes name of employee, purpose and dates of travel, and estimated expenditures
- Approval of advance of funds by governing board or, if delegated, approval of responsible administrator

Field Trips and Special Activities

Authority

EC §35330

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 country.

In conducting field trips and excursions, governing boards or county superintendents may:

- 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.

In conducting field trips and excursions, governing boards may NOT:

- 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."

EC §39860

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.

✓

Minimum Documentation for Audit

- Invoices and itemized receipts

EC §35160
EC §70902

Food/Beverages/Catering/Room Rentals (District Functions)

REFERENCE

Authority

EC §32425

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.

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.

No school district, county board of education, or county superintendent of schools shall expend any public funds on the purchase of alcoholic beverages.

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:

- In-service 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

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.

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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

REFERENCE

Travel Expenses

Authority

EC §44032
EC §87032

Employees

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 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 §35172

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.

Governing Board Members

EC §45243
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.

Personnel Commission

EC §35044
EC §72423

Travel expenses of personnel commissions authorized by EC §45243/88063 are to be supported by submission of the travel policy established by the commission.

Representatives of Governing Board

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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.

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:

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1) Per Diem allowance;
2) Necessary and actual expenses, supported by receipts;
3) Necessary and actual, not to exceed board approved maximums, supported

REFERENCE



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.*

EC §32435
BPC §25608

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.
- 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.

REFERENCE

Note: Authorization and expense claim forms should include the claimant's signature in addition to the individual(s) I 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.

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EXHIBITS

BASIC ACCOUNTS PAYABLE PROCESS

The following are best practices for the Accounts Payable function.

Segregation of Duties

Segregation of Duties Matrix

Process	COSO	Procedure/Function	Grp	1 Create Requisition	2 Approve Requisition	3 Create PO	4 Approve PO	5 Create Voucher	6 Approve Voucher	7 Cut Check	8 Add/Edit Vendor	9 Approve Vendor	10 Bank Reconciliation	11 Enter JE	12 Approve JE	13 Custody of Cash	14 Approval of Bank Dep.	15 Post Receipts	16 Add/Edit Customers	17 TGRRCON (BANNER)	18 Hire Employee	19 Change Compensation	20 Change Benefits	21 Create Paycheck	22 ADP Recon
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	TGRRCON (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

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.
Validate sales/use tax and withholding	Verify that the appropriate sales/use tax has been applied to the invoice and any withholding is processed.

Check for independent contractor status	Determine if the vendor is an independent contractor and flag for issuance of IRS Form 1099-MISC.
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.
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."
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.
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 in 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.

FOR CALIFORNIA STATE

San Diego County Office of Education

COUNTY OF SAN DIEGO
AFFIDAVIT TO OBTAIN DUPLICATE OF LOST OR DESTROYED WARRANT

STATE OF CALIFORNIA

County of _____

«VENDORPAYEE» deposes and says:

That (s)he, the legal owner of that certain County warrant numbered **«WARRANT_NO»**, dated **«WARRANT_DATE»**, and drawn by the County Auditor of the County of San Diego on **«DISTRICT_NAME» «Fund_Name»** of said County, in favor of **«VENDORPAYEE»** as payee thereof, **«Amount_in_words»** dollars **($«WARRANT_AMT»)**;

That said warrant was not endorsed, has not been paid but was lost, destroyed, or mutilated before the same was paid by the County Treasurer of said County of San Diego, and cannot now be produced by the said payee;

That the circumstances of such loss, destruction, or mutilation and all material facts relative thereto, are as follows:

_____

_____

_____

_____

I agree to repay the County of San Diego the amount of this warrant plus interest and reasonable collection expenses if my actions have caused the County of San Diego to issue this warrant and it is not owed to me.

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED_____AT_____
City and State

SIGNATURE_____
Form 124 (Gov. Code 29850-29854 - CCP 2015.5)

_____

FOR AUDITOR USE ONLY

ORIGINAL WARRANT WAS PAID _____ SUBSTITUTE WARRANT SHOULD NOT BE ISSUED.

ORIGINAL WARRANT HAS NOT BEEN PAID AS OF _____. CANCELLATION WAS FILED ON

THIS WARRANT _____. SUBSTITUTE WARRANT CAN BE ISSUED.

AFFIDAVIT - IN STATE INDIVIDUAL

FOR CALIFORNIA STATE

San Diego County Office of Education

COUNTY OF SAN DIEGO
AFFIDAVIT TO OBTAIN DUPLICATE OF LOST OR DESTROYED WARRANT

STATE OF CALIFORNIA

County of _____

_____(**Name** of person signing affidavit) deposes and says:

That (s)he, the _____(**Title** of person signing affidavit) of the legal owner of that certain County warrant numbered , dated , and drawn by the County Auditor of the County of San Diego on the fund of said County, in favor of as payee thereof, for dollars **($)**;

That said warrant was not endorsed, has not been paid but was lost, destroyed, or mutilated before the same was paid by the County Treasurer of said County of San Diego, and cannot now be produced by the said payee;

That the circumstances of such loss, destruction, or mutilation and all material facts relative thereto, are as follows:

_____

_____

_____

_____

I agree to repay the County of San Diego the amount of this warrant plus interest and reasonable collection expenses if my actions have caused the County of San Diego to issue this warrant and it is not owed to me.

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED_____AT_____
City and State

SIGNATURE_____
Form 124 (Gov. Code 29850-29854 - CCP 2015.5)

_____

_____

FOR AUDITOR USE ONLY

ORIGINAL WARRANT WAS PAID _____ SUBSTITUTE WARRANT SHOULD NOT BE ISSUED.

ORIGINAL WARRANT HAS NOT BEEN PAID AS OF _____. CANCELLATION WAS FILED ON THIS WARRANT _____. SUBSTITUTE WARRANT CAN BE ISSUED.

AFFIDAVIT - IN STATE BUSINESS

San Diego County Office of Education

COUNTY OF SAN DIEGO
AFFIDAVIT TO OBTAIN DUPLICATE OF LOST OR DESTROYED WARRANT

STATE OF _____ County of _____

_____(**Name** of person signing affidavit) deposes and says:

That (s)he, the _____(**Title** of person signing affidavit) of **«VENDORPAYEE»** the legal owner of that certain County warrant numbered **«WARRANT_NO»**, dated **«WARRANT_DATE»**, and drawn by the County Auditor of the County of San Diego on **«DISTRICT_NAME»** **«Fund_Name»** of said County, in favor of **«VENDORPAYEE»** as payee thereof, for **«Amount_in_words»** dollars **($«WARRANT_AMT»)**;

That said warrant was not endorsed, has not been paid but was lost, destroyed, or mutilated before the same was paid by the County Treasurer of said County of San Diego, and cannot now be produced by the said payee;

That the circumstances of such loss, destruction, or mutilation and all material facts relative thereto, are as follows:

_____

_____

_____

I agree to repay the County of San Diego the amount of this warrant plus interest and reasonable collection expenses if my actions have caused the County of San Diego to issue this warrant and it is not owed to me.

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED_____AT_____
City and State

SIGNATURE_____
Form 124 (Gov. Code 29850-29854 - CCP 2015.5)

AUDITOR USE ONLY

ORIGINAL WARRANT WAS PAID _____ SUBSTITUTE WARRANT SHOULD NOT BE ISSUED.

ORIGINAL WARRANT HAS NOT BEEN PAID AS OF _____. CANCELLATION WAS FILED ON

THIS WARRANT _____. SUBSTITUTE WARRANT CAN BE ISSUED.

AFFIDAVIT - OUT OF STATE BUSINESS

San Diego County Office of Education

COUNTY OF SAN DIEGO
AFFIDAVIT TO OBTAIN DUPLICATE OF LOST OR DESTROYED WARRANT

STATE OF _____ County of _____

«VENDORPAYEE» deposes and says:

That (s)he, the legal owner of that certain County warrant numbered **«WARRANT_NO»**, dated **«WARRANT_DATE»**, and drawn by the County Auditor of the County of San Diego on the **«DISTRICT_NAME» «Fund_Name»** of said County, in favor of **«VENDORPAYEE»**as payee thereof, for **«Amount_in_words»** dollars **($«WARRANT_AMT»)**;

That said warrant was not endorsed, has not been paid but was lost, destroyed, or mutilated before the same was paid by the County Treasurer of said County of San Diego, and cannot now be produced by the said payee;

That the circumstances of such loss, destruction, or mutilation and all material facts relative thereto, are as follows:

_____

_____

_____

I agree to repay the County of San Diego the amount of this warrant plus interest and reasonable collection expenses if my actions have caused the County of San Diego to issue this warrant and it is not owed to me.

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED_____AT_____
City and State

SIGNATURE_____
Form 124 (Gov. Code 29850-29854 - CCP 2015.5)

_____
FOR AUDITOR USE ONLY

ORIGINAL WARRANT WAS PAID _____ SUBSTITUTE WARRANT SHOULD NOT BE ISSUED.

ORIGINAL WARRANT HAS NOT BEEN PAID AS OF _____. CANCELLATION WAS FILED ON

THIS WARRANT _____. SUBSTITUTE WARRANT CAN BE ISSUED.

AFFIDAVIT - OUT OF STATE INDIVIDUAL

San Diego County Office of Education

PETITION FOR ISSUANCE OF NEW WARRANT IN LIEU OF VOID WARRANT
(Government Code Section 29802, Warrants
Becoming Void After September 20, 1963)

1. TO THE BOARD OF EDUCATION OF THE **«DISTRICT_NAME»**: I, the undersigned, declare that I am the payee of original warrant number **«WARRANT_NO»** dated **«WARRANT_DATE»**, in the amount of **$«WARRANT_AMT»** attached hereto and presented to your Board pursuant to Section 29802 of the Government Code. I hereby request that you adopt an order instructing the County Auditor to draw a new warrant in favor of me for the same amount as the original warrant.

Executed at _____ on _____.

I certify under penalty of perjury that the foregoing is true and correct.

_____ _____
Signature of Payee Name of Payee

_____
Address of Payee

2. ORDER OF THE BOARD OF **«DISTRICT_NAME»** TO DRAW WARRANT:

It is ORDERED by the Board of Education of the **«DISTRICT_NAME»** that the County Auditor of the County of San Diego draw a new warrant in favor of the same payee and in the same amount of the above described warrant.

_____Clerk of the Board

Date _____ By _____ Deputy

3. FM 27 FROM GAD ATTACHED

Dated _____ By _____County Auditor

4. DISTRICT'S REISSUE OF COMMERCIAL WARRANT:

On _____, the district issued commercial warrant number

_____ to **«VENDORPAYEE»**, payee, for **$«WARRANT_AMT»** to replace

canceled warrant number **«WARRANT_NO»** described above.

PETITION FOR ISSUANCE OF NEW WARRANT
IN LIEU OF VOIDED WARRANT - ONLINE DISTRICT

San Diego County Office of Education

PETITION FOR ISSUANCE OF NEW WARRANT IN LIEU OF VOID WARRANT
(Government Code Section 29802, Warrants
Becoming Void After September 20, 1963)

1. TO THE BOARD OF EDUCATION OF THE **«DISTRICT_NAME»**: I, the undersigned, declare that I am the payee of original warrant number **«WARRANT_NO»** dated **«WARRANT_DATE»**, in the amount of **$«WARRANT_AMT»** attached hereto and presented to your Board pursuant to Section 29802 of the Government Code. I hereby request that you adopt an order instructing the County Auditor to draw a new warrant in favor of me for the same amount as the original warrant.

Executed at _____ on _____ _____.

I certify under penalty of perjury that the foregoing is true and correct.

_____ _____
Signature of Payee Name of Payee

_____
Address of Payee

2. ORDER OF THE BOARD OF **«DISTRICT_NAME»** TO DRAW WARRANT:

It is ORDERED by the Board of Education of **«DISTRICT_NAME»** that the County Auditor of the County of San Diego draw a new warrant in favor of the same payee and in the same amount of the above described warrant.

_____Clerk of the Board

Date _____ By_____ Deputy

3. FM 27 FROM GAD ATTACHED

Dated _____ By _____
County Auditor

4. DISTRICT'S REISSUE OF COMMERCIAL WARRANT:

On _____ 20____, the district issued commercial warrant number

_____ to **«VENDORPAYEE»**, payee, for **$«WARRANT_AMT»** to replace

canceled warrant number **«WARRANT_NO»** described above.

PETITION FOR ISSUANCE OF NEW WARRANT
IN LIEU OF VOIDED WARRANT - OFFLINE DISTRICT

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 QUESTIONNAIRE

BID LIMITS

Component *(Definition)*	Bid Limits as of 1/1/2022
EQUIPMENT, MATERIALS, SUPPLIES 20111(a)(1): 20651(a)(1) 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)	**$99,100**
NON-CONSTRUCTION SERVICES 20111(a)(2); 20651(a)(2) 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.	**$99,100**
MAINTENANCE 20111(3)(2); 20651(a)(3) 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.	**$99,100**
PUBLIC PROJECT WORK 20117 (b), 20651(b) 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 20114(a). 20655(a) 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 22032(a)(b)(c) Performed by employees (Force Account), purchase order, or negotiated contract: Let by informal bid: Formal Bid:	**$60,000 or less** **$60,001 to $200,000** **>$200,000**
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. (Municipally owned does not include school districts.) 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) Materials or supplies: Work, all services, apparatus or equipment: Equipment Lease:	 3 Years 5 Years 10 Years

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER:

PROJECT:

APPLICATION #:
PERIOD TO:
PROJECT NOS:

Distribution to:
- ☐ Owner
- ☐ Const. Mgr
- ☐ Architect
- ☐ Contractor
- ☐

FROM CONTRACTOR:

VIA ARCHITECT:

CONTRACT DATE:

CONTRACT FOR:

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)	$	

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____
County of: _____
Subscribed and sworn to before me this ____ day of _____

Notary Public: _____
My Commission expires:

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 or Contractor under this Contract.

APPLICATION AND CERTIFICATE FOR PAYMENT CONT. SHEET FOR AIA DOCUMENT G702 PAGE 2 OF 2

PROJECT NAME: _____
CONTRACTOR'S PROJECT NO.: _____

APPLICATION NUMBER: _____
APPLICATION DATE: _____
PERIOD FROM: _____
TO: _____

ITEM NO.	DESCRIPTION OF WORK	ORIGINAL VALUE	REVISED VALUE	PREVIOUS APPLICATIONS	WORK IN PLACE THIS MONTHE	STORED MATERIALS	TOTAL TO DATE	PERCENT COMPLETE	BALANCE TO FINISH	RETAINAGE
1								#DIV/0!		
2								#DIV/0!		
3								#DIV/0!		
4								#DIV/0!		
5								#DIV/0!		
6								#DIV/0!		
7								#DIV/0!		
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27								#DIV/0!		
28								#DIV/0!		
29								#DIV/0!		
30								#DIV/0!		
31								#DIV/0!		
	Totals							#DIV/0!		

CHANGE ORDER

OWNER ☐
ARCHITECT ☐
CONTRACTOR ☐
FIELD ☐
OTHER ☐

PROJECT:

CHANGE ORDER #:

CHANGE ORDER DATE:

PROJECT #s:

TO:

DATE OF CONTRACT:

FOR:

The Contract is changed as follows:

This is a sample change order.

The original contract amount was	$00.00
Net change by previously authorized change orders	$00.00
The contract amount prior to this change order was	$00.00
The contract amount will be increased by this change order in the amount of	$00.00
The new contract amount including the change order will be	$00.00
The contract time will be increased by Two	days.
The new date of completion as of the date of this change order therefore is	Unchanged

Not valid until signed by all parties below.

ARCHITECT	CONTRACTOR	OWNER
ADDRESS	ADDRESS	ADDRESS
BY *(Signature)*	BY *(Signature)*	BY *(Signature)*
(Typed Name)	*(Typed Name)*	*(Typed Name)*
DATE	DATE	DATE

QSS, INC. DOCUMENT

APPLICATION AND CERTIFICATE FOR PAYMENT (PUBLIC PROJECTS)

[Insert District name, address, phone and fax number]

PUBLIC WORKS CONTRACT FOR SERVICES UNDER $15,000

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 $15,000) 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. **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

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
_____ Certificates of Insurance
_____ Contractor Certification Form, Attachment A
_____ Purchase Order No. _____
_____ Non-Collusive Declaration
_____ Workers' Compensation Certificate
_____ Terms and Conditions dated _____ Attachment B

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:_____

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)

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 two hundred dollars ($200) 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 one-hundred dollars ($100) 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. DIR REGISTRATION: In accordance with Labor Code 1725.5, **if the Project is a public works project in excess of $25,000 or a maintenance project in excess of $15,000,** Contractor and Subcontractors must be registered as of the date of this Agreement.

ARTICLE 9. 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 join 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 my 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 10. 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 contact 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. DISPUTE RESOLUTION: "Claims between the District and the Contractor shall first be resolved using the procedures set forth at Public Contract Code §9204. "Claims" are defined as a separate demand by the Contractor for one of the following: a time extension for relief from penalties for delay; payment of money or damages arising from work done; or payment of an amount disputed by the District. Upon receiving a claim sent by registered or certified mail, the District must review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the claim. The forty-five (45) day period to respond may be extended by mutual agreement. The claim is deemed rejected in its entirety if the District does not issue a response. Any payment due on an undisputed portion of the claim must be processed within sixty (60) days after the District's response. If a claimant disputes the District's response or lack thereof, the claimant may demand to meet and confer for settlement of the issues in dispute. Any portion of a claim that remains in dispute after a meet and confer conference will be subject to nonbinding mediation process, as described in Public Contract Code §9204. Undisputed and unpaid claims accrue interest at 7% per annum. A subcontractor or lower tier subcontractor may make a claim to the District through the Contractor, as specified in Public Contract Code §9204. However, these procedures shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the contract documents."

ARTICLE 25. 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 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 conference") 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 26. 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 27. 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 28. SUBSTITUTIONS: No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the District.

ARTICLE 29. 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 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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 116700 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 36. 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. §16451(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 37. 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 38. GOVERNING LAW: This contract shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 44

[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 $60,000)

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 $60,000) 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.

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
_____ Certificates of Insurance
_____ Contractor Certification Form , Attachment A
_____ Purchase Order No. _____
_____ Non-Collusive Declaration
_____ Workers' Compensation Certificate
_____ Terms and Conditions dated _____ Attachment C

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. (Last four digits only)
_____	_____
_____	_____
_____	_____

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 two hundred dollars ($200) 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 one-hundred dollars ($100) 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. DIR REGISTRATION: In accordance with Labor Code 1725.5, **if the Project is a public works project in excess of $25,000 or a maintenance project in excess of $15,000,** Contractor and Subcontractors must be registered as of the date of this Agreement.

ARTICLE 9. 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 join 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 my 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 10. 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 contact 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. CHANGES AND CHANGE ORDERS: Change orders may not cause the total aggregate cost of the project to exceed $60,000 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 23. 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 24. DISPUTE RESOLUTION: "Claims between the District and the Contractor shall first be resolved using the procedures set forth at Public Contract Code §9204. "Claims" are defined as a separate demand by the Contractor for one of the following: a time extension for relief from penalties for delay; payment of money or damages arising from work done; or payment of an amount disputed by the District. Upon receiving a claim sent by registered or certified mail, the District must review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the claim. The forty-five (45) day period to respond may be extended by mutual agreement. The claim is deemed rejected in its entirety if the District does not issue a response. Any payment due on an undisputed portion of the claim must be processed within sixty (60) days after the District's response. If a claimant disputes the District's response or lack thereof, the claimant may demand to meet and confer for settlement of the issues in dispute. Any portion of a claim that remains in dispute after a meet and confer conference will be subject to nonbinding mediation process, as described in Public Contract Code §9204. Undisputed and unpaid claims accrue interest at 7% per annum. A subcontractor or lower tier subcontractor may make a claim to the District through the Contractor, as specified in Public Contract Code §9204. However, these procedures shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the contract documents."

ARTICLE 25. 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 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 conference") 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 26. 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 27. 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 28. SUBSTITUTIONS: No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the District.

ARTICLE 29. 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 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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 116700 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 36. 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. §16451(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 37. 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 38. GOVERNING LAW: This contract shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 39. 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 40. ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA): All contract work that is performed for the 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 41. 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 42. 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 43. DVBE PARTICIPATION: This contract will be subject to Disabled Veterans Business Enterprise participation goals and records 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 44. 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 44

SYNOPSIS OF
UNIFORM PUBLIC CONSTRUCTION COST ACOUNTING 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 =	$60,000-$200,000
		Formal Bids =	$200,000+
Maintenance =	$96,700	Maintenance =	Must opt in to use CUPCCAA limits
Force Account =	<35,000 ADA = 350 hours	Force Account =	<35,000 ADA = $45,000
	>35,000 ADA = 750 hours OR $21,000 materials		>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. Manual is available from website: **http://sco.ca.gov/ard_cuccac.html**

INDEPENDENT CONTRACTOR DETERMINATION
IRS GUIDELINES

Use the following checklist to define the role of independent contractor vs. employee. The person must past this test in order to comply with IRS regulations governing independent contracts. (*Attach to Agreement.*)

PART I	Yes	No
1. Has this category of worker already been classified an "employee" by the IRS? Administrators ASB workers Athletic coaches Cafeteria workers Clerical staff Counselors Examination monitors Individuals "filling in" on an interim basis Intern psychologists Librarians Nurses Proctors Psychologists School bus drivers Specialty teachers Substitutes Teachers/instructors Tutors School bus drivers		
2. Is this individual working as an employee prescribed by the Education Code? Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.		
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? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.		
7. Does the District require the individual to submit reports on the details of their work or work at a particular site? These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.		
If the answer to any of the above questions is "YES" --- STOP HERE !!! Do not complete the rest of the questions. The individual is a District employee and must be paid and reported accordingly. Call Human Resources for further details.		
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		
9. Does the District have a continuing relationship with this individual? Is this a "one shot" assignment, 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.		
10. Can this relationship be terminated without the consent of both parties?		

	Yes	No
If the answer to the question 8, 9, or 10 is **"YES"**, there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of District control that in Conjunction with other factors imply an employment relationship.		
11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is not available to the general public.		
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.		
If either 11 or 12 are **"NO",** the individual is a District employee **STOP HERE** and process the individual through Human Resources and payroll. If 11 and 12 are both "YES", continue...		
13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.		
14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants.		
If 11 and 12 are **"YES",** 13 through 15 should also be **"YES"** and are items that should be written into the Independent Contract. This individual is an Independent Contractor. A **"YES"** on questions 13 through 15 supports the District's conclusion and substantiates a "reasonable basis" for treatment as independent contractor. While there is circumstances where the District may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.		

By signing below, Contractor and District Representative certify that they have reviewed District guidelines and that the information is true and correct.

Contractor Signature _____ Date _____

District Representative _____ Date _____

INDEPENDENT CONTRACTOR OR EMPLOYEE?
DISTRICT GUIDELINES

PART I

	YES	NO
1. Has this category of worker already been classified "an employee" by the IRS? *Refer to page 1 for individuals listed in IRS Publication SWR 40 and others identified during the IRS compliance studies in San Diego County.*		
2. Is the individual working as an employee prescribed by the Education Code? *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.*		
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? *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 not necessary that the district exercise this right or have the expertise required to do so. In many cases this would not be practical nor advisable.*		
7. Are the services, as being provided, an integral part of school operations ? *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.*		

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? *Consider whether or not the individual may designate someone else to do the work without the district's knowledge or approval.*		
9. Does the district have a continuing relationship with this individual? *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.*		
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 independent trade or business that is available to the general public? *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 not available to the general public.* ***NOTE:*** *Possession of a business license or incorporation does not automatically satisfy this requirement. The determination must be made on the actual relationship between the district and the individual performing services.*		
12. Does the individual have a substantial investment in his/her business; i.e., maintains a facility, equipment, etc.? *This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.*		

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? *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.*		
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? *Generally, these types of expenses are paid by an employer; however, some contracts provide for payment of airfare, mileage, etc., for consultants.*		

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.

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

SAMPLE LETTER

(Submit on District Letterhead)

[insert date]

Michael Simonson, Deputy Superintendent
San Diego County Office of Education
6401 Linda Vista Road, Room 609 San Diego, CA 92111

RE: EMERGENCY WAIVER REQUEST

Dear Mr. Simonson:

Our governing board members have been advised of the circumstances of the need for an emergency contract for the work described below:

> Description of emergency, including the sudden, unexpected and unforeseen nature of the situation, and including a statement of scope of work, cost estimate, and a statement to indicate the effect of the emergency with regard to "permitting the continuance of existing school classes or to avoid danger to life or property," as provided for under Public Contract Code section 20113 (school districts) or 20654 (community college districts).

Your concurrence is needed for the district to proceed. A payment bond will be furnished before allowing the performance of any public project work costing more than $25,000.

A formal resolution will be acted upon by our governing board on *[date of governing board meeting]* and a copy will be sent to you so that formal approval from the County Superintendent of Schools may be considered and granted.

Please contact *[Name and title of district representative]* at *[phone number or email]* if additional information is needed. Thank you.

Sincerely,

[insert name and title]

SAMPLE RESOLUTION

GOVERNING BOARD RESOLUTION FOR EMERGENCY WAIVER – PUBLIC PROJECT

_____School District
Resolution # _____

On Motion of Member _____, seconded by Member _____, the following resolution is adopted by the Governing Board of the _____ School District:

WHEREAS, (indicate the circumstances of the emergency) ; and

WHEREAS, _____ ; and

WHEREAS, _____ ; and

WHEREAS, Public Contract Code section 20113 (school districts) / 20654 (community college districts), as further defined by Public Contract Code section 1102, provides that school districts/community college districts may, with the unanimous approval of the governing board and approval of the county superintendent of schools, contract for the performance of labor and purchase of materials without advertising for or inviting bids in an emergency when such work is necessary to permit the continuance of existing school classes or to avoid danger to life or property;

NOW THERFORE, be it resolved that the Governing Board of the School District has determined that these circumstances constitute an emergency condition and request approval from the county superintendent of schools to enter into contracts for (describe work to be done) without advertising or inviting bids pursuant to Public Contract Code section 20113 (school districts) / 20654 (community college districts) and Public Contract Code section 1102.

PASSED AND ADOPTED by unanimous vote of the members of the Governing Board of the _____ School District this _____ day of _____, 20__ by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN DIEGO)

I, Clerk/Secretary of the Governing Board of the _____ School District, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a regularly called and conducted meeting held on said date.

Signature

_____
Clerk/Secretary of the Governing Board

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 and 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 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 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 not 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 educational 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.

_____SCHOOL DISTRICT RESOLUTION #___

AUTHORIZING THE REPLACEMENT OF WARRANTS

On a motion of Member_____, seconded by Member the following Resolution is adopted:

WHEREAS, during the course of business, this School District issues payroll and commercial warrants for the payments of goods and services received by the District; and

WHEREAS, payroll and commercial warrants are lost, stolen, mutilated, or expire upon occasion; and

WHEREAS, a petition for issuance of a new warrant may be presented by the payee pursuant to Government Code section 29802.

NOW, THEREFORE BE IT RESOLVED by the governing Board of the _____ School District of San Diego County, California, that the following persons shall be authorized to reissue new payroll and commercial warrants upon presentation of a properly completed petition for issuance of a new warrant if such new warrant does not exceed the amount of the original warrant.

	Manual Signature	Facsimile Signature
Superintendent	_____	_____
Assistant Superintendent, Business Services	_____	_____
Assistant Superintendent, Employer/Employee Relations	_____	_____
Assistant Superintendent, Educational Services	_____	_____
Director of Accounting	_____	_____

PASSED AND ADOPTED by said Governing Board on

AYES:
NOES:
ABSENT:

I, Clerk of the Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Governing Board at a regularly called and conducted meeting held on said date.

_____
Clerk of the Governing Board

RESOLUTION FOR CHANGE OF REVOLVING CASH FUND CUSTODIAN
(Education Code §§ 42800-5)

_____School District, San Diego County

ON MOTION OF Member _____ , seconded by Member _____, the following resolution is adopted:

WHEREAS, the expeditious purchase of services and/or material makes it necessary that a Revolving Cash Fund be established for the use of the chief accounting officer of the District; and

WHEREAS, a Revolving Cash Fund was established for use by _____ by the _____ School District Governing Board on _____ and approved by the County Superintendent of Schools pursuant to Education Code Section 42800; and

WHEREAS, the approved amount of the established Revolving Cash Fund is _____ Dollars ($_____); and

WHEREAS, _____ has replaced _____ as the chief accounting officer of the district; and

WHEREAS, _____ accepts the revolving cash fund as being in good order and fully reconciled to his/her satisfaction;

NOW, THEREFORE

BE IT RESOLVED by the Governing Board of the District that pursuant to Education Code Sections 42800-5, a Revolving Cash Fund in the amount of $ _____ is hereby authorized for use by _____, subject to the approval of the Superintendent of Schools, San Diego County.

PASSED AND ADOPTED by the Governing Board on by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN DIEGO)

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 the Governing Board

RESOLUTION ESTABLISHING A REVOLVING CASH FUND
(Education Code Sections 42800 et seq.)
_____School District, San Diego 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, San Diego 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)
COUNTY OF SAN DIEGO) ss

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, San Diego County

RESOLUTION ESTABLISHING ALTERNATIVE REVOLVING CASH ACCOUNT
Education Code § 42810

_____School District, San Diego 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 said Governing Board on _____ by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN DIEGO)

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

RESOLUTION ESTABLISHING PREPAYMENT
REVOLVING CASH ACCOUNT
(Education Code § 42820)

_____ School District, San Diego County

ON MOTION of Member _____ , seconded by Member _____, the following resolution is adopted:

WHEREAS, the Governing Board desires to provide greater flexibility in the payment of District obligations; NOW THEREFORE

BE IT RESOLVED pursuant to Education Code § 42820, a Revolving Cash Fund is hereby established in the _____ Bank in the amount of _____ Dollars ($_____),

BE IT FURTHER RESOLVED, that _____ or _____ is authorized pursuant to Education Code § 42820, a Revolving Cash Fund is to make immediate payments by check drawn on the Revolving Cash Fund bank account in accordance with rules and regulations adopted by this Governing Board.

PASSED AND ADOPTED by the Governing Board on _____ by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN DIEGO)

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 the Governing Board

RESOLUTION DESIGNATING AUTHORIZED AGENT TO SIGN SCHOOL ORDERS
(COMMERCIAL WARRANTS)

_____ School District, San Diego County

ON MOTION OF member _____, seconded by member _____ effective _____through June 30, _____.

IT IS RESOLVED AND ORDERED that, pursuant to the provisions of Education Code Section 42632 or 85232, _____be and is hereby authorized to sign any and all orders in the name of said District, drawn on the funds of said District.

IT IS FURTHER RESOLVED that this motion shall stand and that all additions and deletions shall be submitted in writing to the County Office.

PASSED AND ADOPTED by said Governing Board on _____ by the following vote:

AYES:
NOES:
ABSENT:

STATE OF CALIFORNIA)
)ss
COUNTY OF SAN DIEGO)

I, _____, Clerk of the Governing Board, do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly passed and adopted by said Board at a regularly called and conducted meeting held on said date.

_____
Clerk/Secretary of the Governing Board

Manual signature(s) of authorized person(s):

_____

_____

_____

Facsimile signature(s), if applicable:
(Rubber Stamp)

_____

_____

_____