

Business and Noninstructional Services

ETHICAL STANDARDS FOR CONTACT BETWEEN CONTRACTORS, VENDORS AND CONSULTANTS AND BOARD MEMBERS OR EMPLOYEES

1. Application of "Ethical Standards for Contact between Contractors, Vendors and Consultants and Board members or Employees." These mandated Ethics Standards shall govern the conduct of all contractors/vendors and consultants of the Westminster School District ("WSD") in any relationship with Board members and/or employees. These standards are to be read in conjunction with the latest editions of applicable WSD contracting and procurement policies and procedures. All contractors/vendors shall ensure that their subcontractors comply with these Ethics Standards. Nothing in this policy shall supersede Board Bylaw 9270 or any statutory or common law prohibitions against conflicts of interest by public officers and employees.
2. Purpose. The purpose of these Ethics Standards is:
 - a. To protect the integrity of the procurement process; and
 - b. To provide a comprehensive statement of expectations governing the conduct of contractors/vendors doing business with the WSD so they will be able to compete fairly, and perform their work and services in an ethical manner.
3. Expectations. This document does not address all ethical issues that may arise in the course of doing business with the WSD. Each person and entity is expected to act ethically at all times and in all things. The WSD Business Services Office is responsible for providing education and advice on ethical issues. Contact the Business Services Office with any questions regarding these Ethics Standards.
4. Enforcement. The provisions of these Ethics Standards are enforced by the WSD Superintendent, Assistant Superintendent, Business Services, or designee and other appropriate enforcement authorities. The WSD may reject any bid or other proposal, or impose other sanctions against any person, contractor/vendor, or entity that has not complied with the requirements of these Ethics Standards.
5. Prohibitions. No bidder, proposer, vendor, contractor or subcontractor shall fraudulently deceive or attempt to deceive any District official with regard to any material fact pertinent to any pending or proposed WSD action. Nor shall they do anything with the purpose or intent of placing any District official under personal obligation to the bidder, proposer, vendor, contractor or subcontractor.
6. Avoid the Appearance of Impropriety. All bidders, proposers, vendors, contractors, and subcontractors shall refrain from conduct which they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they are using their relationship with the WSD in an improper manner.

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7. Lobbying. Under the WSD Ethics Standards, a "lobbyist" is defined as any person who receives \$4000 or more compensation in any twelve (12) month period other than reimbursement for reasonable travel expenses, to influence any WSD action. All persons classified as a lobbyist under this definition shall register with the WSD prior to the commencement of any lobbying activity. The WSD may disqualify any person or entity that is in violation of this policy from participating in the contracting process. The WSD definition of lobbyist may be different than definitions used by other agencies. Consult with the Assistant Superintendent, Business Services, to determine whether you or others retained by you are lobbyists. Nothing herein shall affect any rights, restrictions, or obligations under the Political Reform Act, Government Code Section 81000, et seq.
8. Zero Tolerance Regarding Gifts. No bidder, proposer, vendor, contractor, or subcontractor shall offer, give, or promise to offer or give, directly or indirectly any money, gift or gratuity to any WSD Board member, employee or consultant at any time.
9. Zero Tolerance Regarding Offers of Employment. No bidder, proposer, vendor, contractor, or subcontractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any WSD Board member, employee, or consultant, or such individuals' immediate family, spouse, significant other, or business associates, if such offer of employment is conditioned expressly or implicitly on the awarding of a present or future contract, or preference in the awarding of a contract to anyone at any time by the WSD.
10. Contacts by Staff Prior to the Issuance of a solicitation. While informational and market research contacts with prospective contractors, subcontractors, or vendors are a valuable source of data to the WSD, such contacts can be perceived as improper. All parties shall exercise sound judgment and caution to prevent an actual or implied impression that such contacts will result in preferential treatment of the prospective contractor, subcontractor, or vendor.
11. Receipt of Preliminary Information. No bidder, proposer, vendor, contractor, or subcontractor shall request, attempt to request or accept from any WSD Board member, employee, or consultant, any information regarding present or future contracts, or expectations of such contracts, unless this information is made available at the same time and in the same form to all other bidders, proposers, vendors, contractors, or subcontractors.
12. Dissemination of Information. WSD Board members, employees, and consultants shall not provide or attempt to provide information regarding present or future contract, unless this information is made available at the same time and in the same form to all other bidders, proposers, vendors, contractors, or subcontractors, or is public information under the California Public Records Act.

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13. Receipt of Protected Information. No bidder, proposer, vendor, contractor, or subcontractor shall solicit, obtain or accept, directly or indirectly, from any WSD Board member, employee or consultant, any information developed during the course of the contracting process relating to the procurement prior to the contract award unless this information is a public record under the Public Records Act.

14. Influencing Contract Decisions, Negotiations and Protests.

In order to ensure fairness in the contracting process and to prevent even the appearance of impropriety, the District seeks to minimize private contacts between District employees, consultants, and Board members, and bidders, proposers, vendors, contractors, and subcontractors. The intent is to prevent bidders, proposers, vendors, contractors, and subcontractors from obtaining, or appearing to obtain, non-public information about a contract or request for proposal. It is also the intent to prevent even an appearance of bias by District employees, consultants, and Board members.

- a. Commencing with the issuance of a request for proposal, a request for qualifications, or any other document initiating the contracting process, and ending at the time the staff recommendation for award is made public, no bidder, proposer, vendor, contractor, or subcontractor, or representative of such individuals or entities participating in the contracting process shall contact by any means or engage in any discussion concerning the award of the contract with any WSD Board member or consultant until a decision is made on the contract. Any such contact may be grounds for the disqualification of the bidder, proposer, vendor, contractor, or subcontractor. Anyone preparing a bid may contact WSD staff for clarification purposes only.
- b. During price negotiations of non-competitive bid contracts, contractors, vendors, or subcontractors, or their representatives, shall not contact, lobby or otherwise attempt to influence WSD employees or consultants (other than negotiation team members), or Board members relative to any aspect of the contract under negotiation. This provision shall apply from the time of award until the recommendation for execution of the contract is made public. Any concerns relative to any contract under negotiation shall be communicated only to the Assistant Superintendent, Business Services or designee for resolution.
- c. No bidder, proposer, vendor, contractor, or subcontractor or representative thereof, who submitted a proposal or bid in response to a request for proposal, a request for qualifications, or any other document initiating the contracting process shall contact a Board member regarding a protest submitted, regarding the recommended contract award or any lawsuit or potential lawsuit regarding the recommended contract award, or any dispute, lawsuit or potential lawsuit concerning the contract, except as specified herein. Nothing in this policy shall preclude bidders, proposers, vendors, contractors, or subcontractors, from speaking during public comment portions of Board meetings, or

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otherwise engaging in protected speech rights under state and federal law. The restrictions on Board contacts set forth herein shall expire upon the awarding of the contract. Any contacts by bidders, proposers, vendors, contractors, and subcontractors, or their representatives, shall be referred to the Assistant Superintendent, Business Services, or designee.

15. Contractor Qualification. The WSD will accept bids and proposals for contracts and procurement of goods or services having a value to be determined by the WSD, only from firms or entities that are complying with the WSD contracting and procurement policies and procedures, including this policy.
16. Disclosure of Former WSD Employees. To prevent former WSD employees and Board members from using their relationships with the WSD, a WSD department or school, or current WSD employees to improperly influence procurement decision-making, all bidders, proposers, vendors, contractors, and subcontractors are required to disclose whether any of their employees, subcontractors or consultants, within the last three years, have been or are employees of the WSD. The disclosure will be in accordance with current WSD contracting/procurement guidelines, but will include, at a minimum, the name of the former WSD employee, a list of the WSD positions the person held in the last three years, and the dates the person held those positions.

WSD will not contract with any bidder, proposer, vendor, contractor, or subcontractor that compensates any former WSD employee, Board member, or consultant to influence any action on a matter pending with WSD if that former employee, Board member, or consultant, within the last twelve (12) months, held a WSD position in which he/she personally participated in that matter or obtained confidential information relating to that matter.

WSD will not contract with any bidder, proposer, vendor, contractor, or subcontractor that employs a former WSD employee, Board member, or consultant who, while serving in a WSD position within the last two (2) years, substantially participated in the development of the contract's RFP, requirements, specifications or in any part of the contract's contracting process.

The WSD Assistant Superintendent, Business Services, or designee, upon a showing of good cause, may waive this prohibition in writing with notification to the Board prior to awarding the contract.

17. Submitting Proposals After Developing Specifications. A contractor or consultant that has participated in the development of a scope of work, solicitation document, contractual instrument or technical specification for public works on behalf of the District, may not bid or submit a proposal on the project, except as permitted by law.

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18. Conflicts of Interest. A conflict of interest may exist when a WSD Board member, employee, or consultant has a financial interest in or towards a person or entity, which results in a real or apparent advantage to that person or entity. The existence of a financial relationship between a bidder, proposer, vendor, contractor, or subcontractor, and any WSD Board member, employee, or consultant, or a member of that employee's immediate family, who has participated in a WSD action or in the making of a WSD decision concerning that bidder, proposer, vendor, contractor, or subcontractor, constitutes a conflict of interest. A conflict of interest may also exist if the bidder, proposer, vendor, contractor, or subcontractor has previously employed, or is currently offering employment to, or considering the employment application of, any WSD staff or his or her immediate family. Nothing herein shall supersede provisions of state law barring conflicts of interest, including but not limited to Government Code Section 1090, et seq., and the Political Reform Act, Government Code Section 87100, et seq.

If the bidder, proposer, vendor, contractor, or subcontractor has a financial relationship with any WSD Board member, employee, or consultant, the bidder, proposer, vendor, contractor, or subcontractor shall disclose this fact in writing to the Assistant Superintendent, Business Services or designee as soon as this potential conflict of interest is known. The bidder, proposer, vendor, contractor, or subcontractor is under a continuing duty to advise the WSD of any conflicts of interest that arise during the term of the contract.

While not all conflicts will cause a bidder, proposer, vendor, contractor, or subcontractor to be disqualified, failure to disclose a known conflict may justify disqualification and/or sanctions. Be safe -- disclose.

The Assistant Superintendent, Business Services, or designee, in consultation with legal counsel, shall determine whether a conflict of interest exists and recommend appropriate action for resolution. If it is determined that an actual or apparent conflict of interest exists, the WSD Assistant Superintendent or designee shall notify the bidder, proposer, vendor, contractor, or subcontractor in writing of this finding and the action that the WSD shall take to resolve this conflict of interest. If the Assistant Superintendent, Business Services, is the individual with the alleged or potential conflict, the Superintendent or designee shall act in his/her place

19. No Retaliation. The WSD encourages good faith reporting of all suspected violations of these Ethics Standards. There shall be no adverse employment actions taken against anyone making a good faith report of a suspected violation nor shall there be any adverse employment actions taken against anyone accused of violating these standards and subsequently found not to have violated these Ethics Standards. The identity of any persons reporting violations of these standards shall be kept confidential to the extent permitted by law.

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20. Sanctions. All suspected violations shall be reported immediately to the Office of the Assistant Superintendent, Business Services, for investigation. If the suspected violations involve the Assistant Superintendent, Business Services, the report may be made to the Superintendent, who shall be responsible for following the procedures set forth herein. If the Assistant Superintendent determines that the allegations have merit, the matter will be referred to the appropriate authorities. The WSD may take one or more of the following actions
- a. Meeting with the bidder, proposer, vendor, contractor, or subcontractor to discuss the violation;
 - b. Suspending the contract or subcontract involving the offending bidder, proposer, vendor, contractor, or subcontractor;
 - c. Directing the prime contractor to remove the offending subcontractor from the project;
 - d. Rescinding, voiding or terminating the contract; and/or
 - e. Any other reasonable sanction deemed appropriate.

The Assistant Superintendent, Business Services, or designee shall state in writing to the bidder, proposer, vendor, contractor, or subcontractor his/her findings regarding the violation and, if appropriate, recommend sanctions. The bidder, proposer, vendor, contractor, or subcontractor may request an informal hearing with the Assistant Superintendent, Business Services, or designee to explain the bidder's, proposer's, vendor's, contractor's, or subcontractor's position regarding the alleged violation and/or sanctions prior to the Assistant Superintendent, Business Services, or designee taking action. This request must be made in writing and received by the Assistant Superintendent, Business Services, or designee within ten (10) working days of the recommendation for sanctions. If no request is received within the ten (10) working day period the recommended action shall be taken.

If a timely request for a hearing is received, the informal hearing shall take place within ten (10) days after the Assistant Superintendent, Business Services, or designee receives the request. The bidder, proposer, vendor, contractor, or subcontractor may be represented by legal counsel at the bidder's, proposer's, vendor's, contractor's, or subcontractor's own expense at the hearing. Within ten (10) working days after the informal hearing, the Assistant Superintendent, Business Services, or designee shall advise the bidder, proposer, vendor, contractor, or subcontractor in writing the outcome of the hearing, at which time the decision becomes final.

If the sanctions imposed by the Assistant Superintendent, Business Services, or designee are anything more than a conference with the offending contractor, the offending bidder, proposer, vendor, contractor, or subcontractor may file an appeal to the Governing Board, which reserves the

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right to determine whether to hear the appeal. The Governing Board's decision to hear an appeal is within its sole discretion.

In the case of a procurement in which a contract has not yet been awarded, the WSD shall determine whether to terminate the procurement or take other appropriate action.

Policy Adopted: August 13, 2009

WESTMINSTER SCHOOL DISTRICT
Westminster, California