

Regulation 3312: Contracts

Status: ADOPTED

Original Adopted Date: 09/09/2010 | **Last Revised Date:** 05/05/2022 | **Last Reviewed Date:** 05/05/2022

The Business Services Department maintains files on District contracts. A contract, in its broadest sense encompasses all services, materials, and supplies used to operate a school or department. Such services include those of architects and engineers, professional services, construction contracts, and other types used for operations and instructional activities. Contracts also include the purchase of bid and non-bid items for materials, supplies, and equipment, including the construction of schools and other facilities.

All work or services to be performed, supplies and equipment to be ordered, regardless of the dollar value, require a contract to be approved prior to the start, performance or order date. The authority to sign a contract has been delegated by the Board of Trustees to the Superintendent, Chief Business Officer (Assistant Superintendent-Business Services), and the Director of Purchasing. School Sites and Departments will submit the initial paperwork to Business Services for review and approval through the Business Services contract guidelines.

Procurement Code of Conduct

In accordance with the general procurement standards in Title 2, Code of Federal Regulations (2 CFR), Section 200.318(c), each District must develop and maintain written standards of conduct to cover potential personal and organizational conflicts of interest. These written standards must govern the actions of District employees, officers, or agents who engage in the selection, award and administration of contracts funded by federal, state, and local awards.

Any person employed by the District who purchases goods and services, or is involved in the purchasing process for the District, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Diligently follow all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;
3. Conduct all purchasing activities in accordance with the laws, while remaining alert to and advising the District regarding the legal ramifications of the purchasing decisions;
4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the District;
5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;
6. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or services from present or potential suppliers which might influence or appear to influence purchasing decisions;
7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
8. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;
9. Provide an environment where all business concerns, large or small, majority- or minority-owned, are afforded an equal opportunity to compete for the District's business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.

Procurement Standards

All procurement transactions must be conducted in a manner that allows full and open competition consistent with the standards stated in 2 CFR, Section 200.319. To ensure objective supplier performance and eliminate any unfair competitive advantage, suppliers that develop or draft specifications, requirements, statements of work, invitations

for bid (IFB), or requests for proposal (RFP) must be excluded from competing for the bid.

Actions that restrict competition include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Conducting noncompetitive pricing practices between firms or between affiliated companies.
4. Awarding noncompetitive contracts to consultants who are on retainer contracts.
5. Allowing organizational conflicts of interests.
6. Specifying brand name product instead of allowing an equal product to be offered by describing product performance or other relevant requirements.
7. Engaging in any arbitrary action during the procurement process such as awarding a contract without valid reason to a supplier that did not rank first or lowest in price according to the agency's evaluation criteria when awarding a contract.

Incentives

Incentives that may serve to induce or influence an employee engaged in the selection, award, or administration of contracts may be unlawful. Examples of incentives include, but are not limited to:

Extra goods or services that were not solicited

Gifts (such as free merchandise, extra tickets, gift cards) Money for scholarships

Cash

Points that can be redeemed for merchandise

To avoid noncompliance with federal/state/local procurement regulations (including, but not limited to prevent bid protests, this written Code of Conduct prohibits District staff from accepting any incentives offered by a bidder for any District staff member's personal use.

Incentives solicited by the District in the RFP or IFB may be allowable if the incentive or related item benefits the District operations.

When requesting incentives, the District must keep in mind the following:

- All responsive bids or proposals, including those without the requested incentives, must be evaluated
- All requested incentives must exclusively and directly benefit the District; incentives that are retained by the District for nonprogram use, or given to employees or students as a reward for an accomplishment, are not allowed
- Soliciting incentives must not create a barrier to full and open competition
- Eliminating bidders based on the provision of incentives or points programs limits full and open competition by placing unreasonable requirements on those bidders that are unable or unwilling to provide such incentives
- Requesting incentives may reduce the pool of bidders
- Unless all bidders can offer the solicited incentives, the DISTRICT may not score the solicited item as part of the evaluation criteria
- Bids and proposals that include unsolicited incentives are considered overly responsive and DISTRICTs may be required to disqualify overly responsive bids, especially if it causes a material change to the RFP

Consequences

Pursuant to 7 CFR, Section 210.19(a) (4), the California Department of Education (CDE) is required to investigate complaints received or irregularities noted in connection with the operation of the food service program or any other federal/state program. This requirement extends to the performance of individuals and organizations engaged in contract solicitation, award, and administration. The CDE's oversight and monitoring of District procurement activities includes a review of the District's written Code of Conduct and, when necessary, investigations of reported real or apparent conflicts of interest. If a CDE investigation reveals that a District violated their Code of Conduct, the CDE will issue a finding of noncompliance and require the District to take corrective action. Consequences for failure to comply with federal/state regulations are outlined in 2 CFR, sections 200.338 (Remedies for Noncompliance) and 200.339 (Termination), and may include temporary withholding of cash payments, suspension of program funding, denial of all or part of the cost of the noncompliant activity, and/or other remedies to bring the DISTRICT into compliance and termination.

The DISTRICT should be familiar with federal, state, and local laws regarding the misuse of public funds that could lead to other consequences, including civil or criminal penalties, lawsuits, and bid protests that may also result in public mistrust. DISTRICTs shall be responsible for ensuring that their procurements and contracts comply with all applicable laws, program instructions, and guidance materials, and will consult their legal counsel regarding any proposed procurement methods or contract language.

Conflicts of Interest

The District may not enter into a contract or agreement with any individual, firm, or organization that has a financial relationship with a member, employee, or consultant acting on behalf of the District. Consultants working on developing specifications or contracts for the District may not participate in the bid process in the making of any resulting contract as outlined by Government Code 1090. Government Code 1090 indicates that "governing board members, employees of a District, and consultants employed by the District shall not be financially interested in any contract made by them in their official capacity or by any body or board of which they are members."

Forms of Contracts

Purchase Order

The Purchase Order is the most common form of contract document utilized by the District and is generally used to purchase all materials, equipment, and supplies that do not require formal competitive bidding and are not available through the District Stores Warehouse inventory. When the request has been typed, formally signed, and approved by all appropriate persons, the Purchasing Department will select the best supplier after reviewing current bids and quotes, assign a Purchase Order number and place the order with the supplier. Once the supplier has accepted the Purchase Order a valid contract exists to provide the materials, equipment and supplies requested. The authority to sign Purchase Orders has been delegated to the Director of Purchasing and the Chief Business Officer.

No school site or department will initiate an order with a supplier and indicate to the supplier that a Purchase Order will be forthcoming, so as to obligate District funds without the required approvals.

It is the practice of the District to utilize the Purchase Order in lieu of signing supplier copies of maintenance agreements, licensing agreements, and other service contracts. The District shall advertise for competitive bids to let any public project contract involving an expenditure in excess of the current Uniform Public Construction Cost Accounting Act limit. Public Project means construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a District owned, leased, or operated facility no matter the source of funding to the Board for approval and ratification within 60 days of entering into the contract at the next available board meeting.

Competitive Bid

When a projected expenditure for materials, goods, equipment, and services not classified as public project contracts exceeds the formal bid limits prescribed by Public Contract Code 20111 for materials or services a formal competitive bid is required.

Formal competitive bids require publication in a newspaper advertising an invitation for bids on behalf of the District for the performance of labor and furnishing of materials or supplies. Publication will be made once a week for a two week period designating the time and place for bid submission.

Once the bid has been awarded by the Board, the standard agreement will be signed and the terms of the bid become the contract. A Purchase Order will be issued encumbering the funds against the District budget after award by the Board.

Independent Contractor Agreements

When a school site or department requires specialized services or advice in financial, economic, accounting, engineering, legal, or administrative matters as outlined in Government Code 53060, the District will utilize an Independent Contractor Agreement to contract for the services. Government Code 53060 exempts these types of services from competitive bidding except for those services identified in Government Code 4525.

Each school site or department will submit the District's Performance Agreement, the purchase requisition, and the independent contractor checklist certifying compliance with IRS regulations. All Performance Agreements will require approval of the Assistant Superintendent, Business Services before processing and before work is performed.

1. Employee Consultants (Professional Experts)

Individual consultants who perform work within the District and answer yes to the following questions will be paid through the District's Payroll Department:

- Providing Direct Services to Students?
- Performing work within an existing District job description?
- Currently employed by another school District?
- Current member of STRS/PERS?

These individual consultants will be designated as Employee Consultants (Professional Experts). The school site or department will complete a personnel requisition form and provide the following documentation:

- Full Description of what the person is to accomplish (May use the District's contract form signed by consultant and place in file in Classified Human Relations.)
- Resume of individual
- W-4 IRS form
- Copy of driver's license
- Copy of social security card
- Recommend one of seven pay levels established for Employee Consultants

Once all documentation is completed, the school site or department will forward documentation to Fiscal Services Department for processing through the Payroll System.

2. Independent Contractors

If an individual is determined to be an independent contractor, then the school site or department will complete consultant checklist along with the following documentation:

- Full description of what the person is to accomplish
- IRS Independent Contractor Guideline Certification
- W-9 IRS form (Taxpayer identification number)
- Form 590 -Withholding Exemption Certificate (Out of state contractors only)
- Pay rate
- Fingerprinting Determination to be signed by appropriate site administrator
- Purchase Requisition with budgetary information must be inputted into financial system.

Once all the documentation is completed, it will be forwarded to the Business Services Department for approval by the Assistant Superintendent, Business Services. If the contract exceeds \$10,000.00, the contract will be presented to the Board on the consent calendar for approval. Once approved, the Business Services Department will ensure that the funds are encumbered in the District's financial system.

Public Work Contracts

Public Works contracts greater than \$1000 and less than \$200,000 require the use of the public works contract form insuring that the District complies with all state guidelines for public works contracting. Public Works Projects are defined per Public Contract Code 22002 as follows:

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.

Public Works contracts will be completed by the contractor and submitted by the requesting site/department along with the purchase requisition and required certificates of insurance. Specialty Contractor Contracts will be approved up to the formal bid limit through the purchase order approval process.

The Business Services Department is responsible for verifying the validity of the contractor's licenses with the State Contractors Licensing Board and to make sure that all contractors performing work are registered with the Department of Industrial Relations.

State Allocation Board Contracts

The Superintendent or designee shall ensure that the District complies with disabled veteran business enterprise (DVBE) participation goals of three percent for State Allocation Board funded projects over \$10,000 in the Lease-Purchase program and certain contracts (architectural, on-site inspections and utility hookups) over \$10,000 in the State Relocatable Classroom Program.

For projects requiring DVBE participation goals, bidders will provide to the District certification that the bidder has satisfied the three percent participation goal for DVBEs. If the bidder (s) is unable to meet the three percent participation goal, the District shall evaluate the effort made by the bidder to seek out and consider DVBEs as potential subcontractors or suppliers of equipment or materials. The bidder shall demonstrate a "good faith effort" by submitting documentation as prescribed by District standards.

Bidders shall be eligible for the award of a District contract if they meet the participation goal or are founded to have made a good faith effort to meet the goal.

Architectural, Engineering, Environmental, Construction Management, et. al Contracts

Government Code 4525-4529.5 requires Districts to select professional services for architectural, engineering, environmental, construction management, land surveying on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Districts are to solicit requests for proposals from at least three qualified firms. The District may select any of the firms best able to meet the criteria established by the District.

Contracts for Digital Storage and Maintenance of Student Records

The District may enter into or renew a contract with a third party for the purpose of providing services, including cloud-based services, for the digital storage, management, and retrieval of student records and/or to provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use student records. For these purposes, student records include any information maintained by the District that is directly related to a student and information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other District employee, and do not include de-identified information (Education Code 49073.1)

Any such contract shall contain all of the following:

1. A statement that student records continue to be the property of and under the control of the District.
2. If applicable, a description of the means by which students may retain possession and control of their own student-generated content, as defined in Education Code 49073.1, including options by which a student may

transfer student-generated content to a personal account.

3. A prohibition against the third party using any information in the student record for any purpose other than those required or specifically permitted by the contract.
4. A description of the procedures by which a parent/guardian or a student age 18 years or older may review personally identifiable information in the student records and correct erroneous information.
5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of student records.
6. A certification that a student records shall not be obtained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced, except that these requirements shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content.
7. A description of how the District and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act, 20 USC 1232g.
8. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising.

Fingerprinting Clearance

Pursuant to Education Code 45125.1, all firms and individuals providing services to District school sites that interact with students will certify to the District that employees of the firms and individuals have been cleared by the Department of Justice of all serious crimes as outlined in the code. Certification of fingerprinting clearance will be maintained in the Business Services Department with the contract and must be on file prior to any performance under the contract.

Approvals

All contracts exceeding \$10,000 will be presented to the Board for approval on the consent calendar prior to the start of work except for the Public Works Contracts which shall be approved up to the legal bid limits for the Uniform Public Construction Cost Account Act (UPCCAA) through the purchase order listing approval process. Contracts for services identified in Government Code 4525 through 4529.5 exceeding \$100,000 will be presented to the Board for approval on the consent calendar prior to the start of work.

All contracts with multiple year financial commitments regardless of dollar value will be presented to the Board for approval.

Revisions/Change Orders

Revisions to contracts or purchase orders exceeding 10% of the originally approved expenditure and under \$10,000 shall be provided to the Board for ratification through the purchase order listing report. Revisions to contracts in excess 10% of the originally approved expenditure and over \$10,000 shall be provided to the Board for approval prior to processing through the contract listing report. All revisions to contracts, performance agreements or purchase orders will be processed through the Business Services Department.

Revisions to construction/public work contracts may not exceed 10% of the awarded contract or the legal bid limit for public works projects whichever is greater. Due to the nature of construction/public work activity and to keep the public work activity on schedule, the Board authorizes the Superintendent or designee to negotiate any single change order up to 3% of the awarded contract with ratification by the Board of Trustees within sixty (60) days of the change order. Any change orders for construction/public work contracts exceeding 10% will require competitive bids.

Negotiations for change orders for public work projects, contracts, and purchase orders will be handled by the Chief Business Officer or designee. All change orders will be specified in writing and signed off by both the District and the Contractor prior to ratification by the Board.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the Governing Board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

5 CCR 15500	Food sales in elementary schools
5 CCR 15501	Food sales in high schools and junior high schools
5 CCR 15575-15578	Requirements for foods and beverages outside the federal meals program
Ed. Code 14505	Provisions required in contracts for audits
Ed. Code 17250.10-17250.55	Design-build contracts
Ed. Code 17595-17606	Contracts
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 35161	Governing boards; powers and duties
Ed. Code 35182.5	Contracts for advertising
Ed. Code 45103.1	Personal services contracts
Ed. Code 45103.5	Contracts for management consulting services; restrictions
Ed. Code 49073.1	Contract requirements for digital storage, maintenance and retrieval of student records
Ed. Code 49431-49431.7	Nutritional standards
Gov. Code 1090	Prohibition of financial interest in contracts by specified officers
Gov. Code 1097.6	Independent contractors
Gov. Code 12990	Nondiscrimination and compliance employment programs
Gov. Code 53260	Contract provision re maximum cash settlement
Gov. Code 53262	Employment contracts
Gov. Code 7928.801	Public Records Act; contracts for goods and services
Gov. Code 84308	Campaign disclosure
Lab. Code 1771.8	Private labor compliance entity; potential conflict of interest
Lab. Code 1775	Penalties for violations
Lab. Code 1810-1813	Working hours
Pub. Cont. Code 20104.50	Timely progress payments
Pub. Cont. Code 20111	Contracts over \$50,000; contracts for construction; award to lowest responsible bidder
Pub. Cont. Code 22300	Performance retentions
Pub. Cont. Code 4100-4114	Subletting and subcontracting fair practices
Pub. Cont. Code 6102	Awarding of contracts
Pub. Cont. Code 7104	Contracts for excavations; discovery of hazardous waste
Pub. Cont. Code 7106	Noncollusion affidavit

Federal

20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
7 CFR 210.1-210.33	National School Lunch Program
7 CFR 220.1-220.21	National School Breakfast Program

Management Resources

CSBA Publication

Description**Description****Description**

[Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, April 2006](#)

Management Resources

Website	Financial Crisis & Management Assistance Team
Website	CSBA District and County Office of Education Legal Services
Website	CSBA
Website	California Association of School Business Officials

Cross References

	Description
0440	District Technology Plan
0440	District Technology Plan
1220	Citizen Advisory Committees
1220	Citizen Advisory Committees
1230	School-Connected Organizations
1230	School-Connected Organizations
1321	Solicitation Of Funds From And By Students
1321	Solicitation Of Funds From And By Students
1325	Advertising And Promotion
1340	Access To District Records
1340	Access To District Records
1700	Relations Between Private Industry And The Schools
2121	Superintendent's Contract
3000	Concepts And Roles
3100	Budget
3100	Budget
3230	Federal Grant Funds
3290	Gifts, Grants And Bequests
3300	Expenditures And Purchases
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3311	Bids
3314	Payment For Goods And Services
3314	Payment For Goods And Services
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3400	Management Of District Assets/Accounts
3460	Financial Reports And Accountability
3460	Financial Reports And Accountability
3470	Debt Issuance And Management
3511.1	Integrated Waste Management
3511.1	Integrated Waste Management
3540	Transportation
3540	Transportation
3551	Food Service Operations/Cafeteria Fund
3551	Food Service Operations/Cafeteria Fund

Cross References

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