Fundamentals of Purchasing
The following handout is provided for reference purposes only. While we endeavor to keep the information up-to-date and correct, the SDCOE makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the contents.
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**NOTE:** Some of the samples may contain outdated bid limits and are for reference purposes only.
ACKNOWLEDGEMENTS

The contents of this handbook have been provided by various sources and have been reviewed by various legal firms. The efforts and contributions of all those involved are deeply appreciated.
PURCHASING POLICIES & PROCEDURES
PURCHASING PROCEDURES
OBJECTIVES & PHILOSOPHY

OBJECTIVE

The primary objective of a Purchasing Policy and Procedures Handbook is to provide reference information on “HOW TO DO IT”, to assist in answering the day to day questions of men and women who work in purchasing departments and to be in compliance with Sections 54202 and 54204 of the Government Code of California.

As stated:

54202 Every local agency shall adopt policies and procedures, including bidding regulations, governing purchases. Purchases of supplies and equipment by the local agency shall be in accordance with said duly adopted policies and in accordance with all provisions of law governing same. No policy, procedure, or regulation shall be adopted which is inconsistent or in conflict with statute. (Added Stats. 1957, c.1912, p.3344, l.)

54204 If the local agency is other than a city, county, or city and county, the policies provided for in Section 54202 shall be adopted by means of a written rule or regulation, copies of which shall be available for public distribution. (Added Stats. 1957, c.1912, p.3344, l.)

The following is a sample of written procedures for a school purchasing department:

PURPOSE OF A WRITTEN POLICY

As school districts become more decentralized the need for written communications on policies and procedures for a district and its personnel become more vital to the total operation of the district. Written statements for centralizing the policies and procedures of a school district purchasing department have numerous advantages. For example; written statements:

1. Spell out the responsibilities and authority of purchasing.
2. Apprise other departments of purchasing’s prerogatives and thus avoid misunderstandings and friction.
3. Help promote consistent and fair relations with vendors, old or new.
4. Facilitate uniform action by all purchasing personnel in dealing both within and outside the district.
5. Standardize routing purchasing procedures and thus relieve the need for close supervision.
6. Facilitate training of new personnel in schools, departments, etc.

A purchasing policy and procedure handbook should be considered as a tool and guide to a more effective, legal and standardized purchasing system.
DISTRICT PURCHASING POLICIES

A. BOARD RELATIONS

1. All duties of purchasing for the Board of Education may be centralized under the Purchasing Department with the mechanical function of procurement being delegated to the department by the Board. However, under law, the Board has the sole authority and responsibility for all purchase contracts of the district, and this authority and responsibility cannot be delegated.

2. The main purpose of the Purchasing Department is service to and for the district. To accomplish this purpose, the following fundamental functions must be fulfilled.
   a) Buy the proper product for the purpose required.
   b) Have the product available when needed.
   c) Buy the proper amount of the product.
   d) Pay the proper price.
   e) Buy without favor or prejudice.

3. The Board shall designate District officials who shall be authorized to sign purchase orders and other purchase or contractual obligations of the District.

4. The Purchasing Department shall submit a listing of every purchase order written for approval at each Board meeting within 60 days of issuance.

5. The action of the Board on all purchase orders shall be recorded in the minutes of the Board of Education.

B. PURCHASING DEPARTMENT DUTIES

1. The Purchasing Department shall establish practical and efficient office procedures, reports, records, and systems for the proper conduct of the department.

2. The Purchasing Department shall conduct, or supervise all purchase transactions for the District.

3. The Purchasing Department shall prepare and keep up-to-date a Stock Catalog built around the principles of simplification and standardization. (Districts with Warehouse services.)

4. The Purchasing Department acts as a center of information on sources of supply for the many items used by the District.

5. The Purchasing Department shall coordinate with the Accounting Department relative to the maintenance of a system of warehouse inventory control to account for available equipment and supplies to insure that sufficient materials are on hand for the proper functioning of the District. (Districts with Warehouse services.)

6. The Purchasing Department shall establish a purchasing calendar to consolidate orders, buy seasonal items at the right time of the year, and seek price benefits through proper timing and quantity buying.

7. The Purchasing Department shall handle the disposal of all surplus property, obsolete or scrap material, as authorized by the Board of Education.

C. PURCHASING AND STAFF RELATIONSHIPS

1. All requests for prices or for repair service, and all purchasing shall be made by the Purchasing Department.
2. Salesmen shall not be permitted in schools or departments for the purpose of making a sales. If it is necessary to contact salesmen regarding special or highly-technical details of their products, schools or departments shall request such visits through the Purchasing Department.

3. All communications with suppliers shall be through the Purchasing Department, except in special cases where the technical details make it advisable to delegate authority to others. A copy of all correspondence shall be forwarded to the Purchasing Department.

4. In interviews with salesmen, no one who is not a member of the Purchasing Department shall commit himself by implications or otherwise on preference for any product, the District’s source of supply for any product, or give any information regarding performance or price which might in any way embarrass the District.

5. The Purchasing Department shall strive constantly to increase its knowledge of new materials and services and shall keep other departments informed.

6. Employees of the district shall not be financially interested in any contract for goods when:
   a) The contract is between the School District and a partnership or unincorporated association of which the employee is a partner or in which he is the owner or holder, directly or indirectly, or a proprietorship interest.
   b) The contract is between the School District and a corporation in which any employee is the owner or holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock.

7. The Purchasing Department should establish a collaborative relationship between the classroom teacher, principal and the various central administrative departments to ensure timeliness of purchases.

8. The Purchasing Department shall seek competent counsel from its colleagues regarding matters of common interest.

9. Selection of the material needed is a prerogative of each using department; however, the Purchasing Department shall have the authority to question the quality and kind of material requested and to make recommendations relative to safety, health, economy, and substitute material. Disagreements over materials that cannot be reconciled between the Purchasing Department and the requisitioner will be forwarded to the proper staff member or committees for decision.

10. Requests for rush orders and emergency orders should be held to a minimum due to the lack of time for negotiating with the vendors. All such orders must go through the Purchasing Department where special consideration will be given.

11. The Purchasing Department shall work with committees to study and recommend adoptions and revisions of specifications for materials and equipment best suited for the purpose intended.

12. District student bodies may request the services of the Purchasing Department to assist them in their purchasing activity.

D. PURCHASING AND VENDOR RELATIONSHIPS

1. All suppliers’ representatives shall have the opportunity to introduce themselves and their products the first time they call. Subsequent visits shall be promptly acknowledged and interviews granted when time allows or appointments made to accommodate the schedule.
2. The Purchasing Department shall not extend favoritism to any vendors. Each order shall be placed on the basis of quality, price and delivery, with past services being a factor if all other considerations are equal.
3. All letters, wires and other types of communications shall be answered or acknowledged promptly.
4. The Purchasing Department shall conduct all price adjustment negotiations when necessary.
5. The Purchasing Department shall not solicit funds or material from vendors, however worthy the purpose.
6. Visiting the suppliers at their places of business shall be encouraged when all costs are born by the district.

E. PURCHASING PROCEDURES (Board of Education Approval)

1. A list of all Purchase Orders written will be presented to the Board of Education within 60 days of execution.

F. PURCHASING GOODS and SERVICES (Requisitions)

1. All requests for supplies and equipment shall originate with the principal or department head and shall be forwarded to the business office.
2. Requests should be provided for internal and external requisitions for merchandise.
3. It shall be the responsibility of the Purchasing Department to determine whether or not a requisition is in accordance with the Board of Education policy and procedures and public contract code. If disputes arise that cannot be arbitrated, the Superintendent shall make the final decision.

G. SOLICITING PRICES (Bids and Quotations)

1. The Purchasing Department shall periodically estimate requirements of standard items or classes of items and make quantity purchases, thereby effecting economies.
2. The Purchasing Department shall purchase from sources within the District whenever quality, price and service are equal to or lower than sources outside the District.
3. Competitive bidding shall be practiced (advertised bid, written price quotation, oral price quotations) whenever practical or required by law.
4. Bid instructions shall be clear and complete, setting forth all conditions necessary to bid.
5. Bid specifications shall be clear, complete and conducive to competitive bidding.
6. The Purchasing Department shall seek bids from those sources able to offer the best prices, consistent with quality, delivery and service.
7. Bids shall be opened in public at the prescribed time and place, and tabulated for study.
8. After the bids have been opened and tabulated, they will be available for those interested in reviewing the documents. They shall not, however, be removed from the Purchasing Office. Paper copies will be charged a per page copy cost not to exceed actual cost of duplication.
9. A summary of all bids over $15,000.00 for work to be done and $50,000 (as adjusted annually by the Superintendent of Public Instruction) for services, materials or supplies,
showing the recommendations of the Purchasing Department shall be submitted to the Board for approval.

H. BID PROCEDURES

1. The District will act in accordance with Public Code 20111 which reads: “The Governing Board shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than fifty thousand dollars ($50,000) [this is updated annually by the Superintendent of Public Instruction] for materials or supplies to be furnished, sold or leased to the district to the lowest responsible bidder who shall give such security as to the Board requires, or else reject all bids. This section applies to all materials and supplies whether patented or otherwise. In this regard the district will follow provisions of PCC 20116 which states, “It is unlawful to split or separate into small work orders or projects any project for the purpose of evading provisions of the Code requiring work to be done by contract after competitive bidding.”

2. The District will act in accordance with PCC 20112 which reads: “For the purpose of securing bids the Board shall publish at least once a week for two weeks in some newspaper of general circulation, circulated in the county, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time and place where the bids will be opened.”

3. For purchases less than the bid limit, the determination as to whether or not to have written or telephone bids shall be left to the discretion of the Purchasing Department.

4. Notwithstanding any other provisions of the Ed. Code and/or PCC to the contrary, purchases may be negotiated with the Federal Government or any agency thereof, for any surplus property in any amount required for the operation of the District without taking estimates or advertising for bids in compliance with Education Code Section 17620.

5. Purchases may be negotiated for materials or supplies produced by the California Correctional Industries at prices fixed by them as provided in the Penal Code

6. Supplies and materials may be purchased on a continuing contract of not more than 3 years, while services may be contracted for not more than 5 years, in compliance with Education Code Section 17596 – Section 81644 for Community College Districts.

I. RECEIVING GOODS

1. A Central Warehouse may be maintained under the direction of the Purchasing Department.

2. All supplies and equipment, unless otherwise specified, shall be delivered to the Central Warehouse for inspection and storage or delivery to the schools and departments. After supplies and equipment have been inspected and receipt acknowledged, payment authorization for such items shall be given by the Board of Education through the issuance of school warrants.
Legal Issues
In School Purchasing

Acknowledgements:

The following section was compiled by the Purchasing Professional Council of the Southern Section of CASBO for the 2010-2011 Annual Conference.

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NOTE: Some minor revisions were made to the Legal Issues section by those coordinating this Handbook to add changes to bid limits or case law to be in line with current law.
INTRODUCTION

BIDS: GOING ONCE, GOING TWICE, GONE!

WHICH BID LIMIT TO USE?
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SERVICES THAT EXCEED THE BID LIMIT
BID LIMIT WITH A TRADE-IN
BID LIMIT WITH CUMULATIVE ORDERS
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INTRODUCTION

LEGAL ISSUES IN SCHOOL PURCHASING

This handout was prepared to serve as a resource to guide the purchasing staff through some of the everyday challenges that arise in the School Purchasing Office.

The examples provided in this document are for information and reference only. Please consult your county office of education for specific input to your considerations.

The Legal Code summaries provided may be in an abbreviated form. Refer to the PURCHASING REFERENCE GUIDE TO LEGAL CODES for the full code definition.
ISSUE: WHICH BID LIMIT TO USE – CURRENT YEAR THRESHOLD FOR EQUIPMENT ($90,200 for 2018), OR $15,000 FOR WORK TO BE DONE?

Your District needs to purchase a piece of equipment that costs $25,000. It requires installation which is going to run approximately $20,000 --- DO YOU NEED TO GO OUT TO BID?

If there is a charge for any work to be done, such as installation that is classified as public works, the bid limit for work to be done ($15,000) should be utilized in connection with the purchase and installation of equipment. However, if the installation is merely incidental to the purchase of the equipment and if there is a minimal charge for installation, the current bid limit for the purchase of equipment ($90,200 for 2018) may be utilized for the purchase and installation of equipment. (See Appendix A-1 for a more detailed discussion).

ISSUE: DO YOU HAVE TO BID A LEASE IF THE VALUE OF THE LEASE TERM EXCEEDS THE BID LIMIT?

Your District would like to lease copiers for a five-year period; the total cost per year is $50,000.

Education Code states that before a lease or lease-purchase agreement may be entered into the lessee shall comply with all applicable provisions for bids and contracts, and that 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. Public Contract Code requires school districts to bid any contracts over the established bid limit for the purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district. Since a contract with a value of $50,000 per year for five years has a total value of $250,000, then it would have to be bid.

PCC20111, EC 17451; Community College: PCC 20651, EC 81551

ISSUE: SERVICES THAT EXCEED THE BID LIMIT

Your District needs to contract for Telephone Repair and Security Services that total approximately $93,000 annually.

If you suspect the total of these services will exceed the bid limit, it should be subject to competitive bidding requirements. PCC 20111; Community College: PCC 20651, EC 81644

Note: It is unlawful to split orders or separate into small work orders or projects any project for the purpose of evading provisions of the Code requiring work to be done by contract after competitive bidding. PCC 20116.

ISSUE: DOES TRADE-IN VALUE AFFECT THE BID LIMIT?

You have a piece of equipment to be purchased that exceeds the current year bid limit ($90,200 for 2018). A trade-in will bring the net purchase value below the bid limit. Must the purchase be formally bid?

Yes. The value of the item, which is being traded-in, is a portion of the payment of the item. It is the overall cost of the equipment that must be considered. (See Appendix A-2 for more detailed discussion)
**ISSUE: CUMULATIVE ANNUAL ORDERS & THE BID LIMIT**

You have purchased forty (40) computers, the total cost of which is under the bid limit. Then you are notified that one of your school site needs ten (10) additional computers which, purchased alone, is not over the bid limit. When you take into account the previous (40) ordered you are over the limit. Can you purchase the additional ten (10) without going to bid?

Yes, because it is unforeseen. However, splitting orders or contracts should be avoided whenever the total requirement can be foreseen for the fiscal year or any reasonable period of time. PCC 20116; Community College: PCC 20657

**ISSUE: CAN YOU USE PROPRIETARY SPECIFICATIONS?**

Your Maintenance Department wants you to go out to bid for paint. They will only accept one brand. Is this legal?

It is a long and well-established rule that the proposals and specifications inviting such bids must be free of any restrictions tending to stifle competition. Your specifications should list at least known equals and include "or equal" in your bid. PCC 3400 contains some exceptions, which are discussed in Section C.12 of the Methods of Purchasing Section of this Handbook.

**ISSUE: WHAT IS A BID IRREGULARITY & INFORMALITY?**

You have an unsigned formal bid. Can it be accepted under the provision that: “The Board reserves the right to reject any or all bids and to waive any informality in any bids received”?

No, usually not, unless there are some substantial facts upon which the enforceability of the bid as a binding offer can clearly be established.

It is permissible for the board to waive an informality which does not change the substance or the enforceability of the bid or which will not give the bidder an unfair competitive advantage as a result of a waiver. These should be done on a case-by-case basis. A district should keep a record of each case-by-case finding, in order to establish district practice in this area.

**ISSUE: WHAT REMEDY DO YOU HAVE WHEN YOUR BID SPECIFICATIONS ARE INCORRECT?**

You have a bid that has already been sent out to vendors, when you detect an error in the specification.

If time permits (at least three days prior to the bid opening), you can issue an addendum to the bid. This must be sent or faxed to everyone who has received the bid. It is recommended to request a signed copy of the addendum that should be turned in with the bid. If time does not permit an addendum, it is advisable to reject all bids and re-bid.

PCC 4104.5

**ISSUE: ADVERTISING & LABOR RATES**

Do you have to list the prevailing wage rates when advertising for bid and/or must they be included in the bid specification packet?
No. You do not have to publish the actual labor rates associated with the job. The bid advertisement should include a statement that the work requires prevailing labor rates as part of the specifications. (See Appendix A-3 for advertising sample). You can also include a statement in your bid listing the web address where most current rates will be available, that address is http://www.dir.ca.gov/DLSR/PWD/index.htm

**ISSUE: BID EVALUATIONS AND AWARDS**

Can you include life cycle and maintenance costs as an evaluation factor when awarding a bid?

Yes. Many factors that affect the overall cost may be used when evaluating a bid. (See Appendix A-4 for detailed discussion)

**ISSUE: CAN I PURCHASE THROUGH A BID THAT IS NOT IN MY COUNTY?**

Yes. The district can purchase through another public agency, even if it is not located in the same county. Government Code 6500 and Public Contract Code 1100 defines public agency and Public Contract Code 20118 gives a district the authority to purchase through another public agency but must follow all the terms and condition set forth by the bid of such agency. This is commonly referred to as piggybacking. The piggybacking statement must be in the originating public agency’s bid documents and the vendor must agree to its terms. At times the piggybacking option is narrowed to certain geographical areas to take into consideration delivery and shipping. Get a copy of the original bid and thoroughly check the terms and conditions before you enter into a contract through piggybacking. You should also consider the political impact of purchasing outside of the county. Some districts are required to notify their board when using a piggyback contract; others take a blanket item to their board each year, for approval to use piggyback contracts (including CMAS, WSCA, etc.), as they are available and advantageous to the district. PCC 20118

**ISSUE: YOU HAVE MANY COMPANIES OFFERING LONG DISTANCE SERVICES. IS THIS A SERVICE THAT MUST GO OUT TO BID?**

Because long distance telephone service is a competitive market nowadays, there are many options available for long distance services. Competition breeds innovation and lower costs, but it also breeds marketing efforts designed to get you to make a quick decision without looking into all the hidden details.

You have options today for plans with unlimited long distance calls, flat-rate long distance calling plans, and plans with no monthly fees. Shop around carefully. In the past, the long distance calls within geographical region are subject to the monopoly of the local telecommunications company. These services were not subject to the bid requirement of public contracts code since the courts have held that public utilities are the only ones that may provide that utility therefore were an exception to the bid requirement. But with deregulation and competition, it is no longer considered sole source, therefore this could be bid in accordance with the dollar limits provided by Public Contract Code 20111.

Read the Public Contract Code Section 12120 below:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and acquisition of alternative telecommunications
systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All acquisitions shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of information technology goods and services, except to the extent any directive or provision is uniquely applicable to information technology acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to acquisition of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

**ISSUE: I NEED TO CONTRACT TO HAVE SOME ASBESTOS REMOVED IMMEDIATELY. IT IS EXPECTED TO EXCEED THE BID LIMIT. DO I HAVE TO GO TO BID? (EMERGENCY)**

No, not necessarily. This may qualify as an emergency expenditure for work to be done.

Public Contract Code 20113 (Community College: PCC 20654) allows for the awarding of an emergency contract without bids. In an emergency situation when any repairs, alterations, work or improvement is necessary to permit the continuance of existing school classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county office of education, do either of the following:

a) 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 emergency situation without advertising for/or inviting bids.

b) Notwithstanding section 20114, authorize the use of day labor or force account for the emergency situation.

It is advisable for a district to contact their county office of education, even if just by telephone, prior to taking an emergency resolution to their board of education.

Note that the requirement for any bonds or security otherwise required by law is still in effect in cases of emergency.

As discussed in Section C.13 of the Methods of Purchasing Section of this Handbook, case law generally requires that there be an event that is sudden and unexpected for this emergency section to apply.
ISSUE: AWARDING A BID ON A BASIS OTHER THAN THE LOWEST PRICE (PIGGYBACK)

You have a bid for district-wide computers, and the Technology Department wants to award to a bidder offering a new innovative computer design that will decrease the total cost of ownership over the life of the computer, even though the initial purchase bid price is not the low bid. Can you award the bid on factors other than price alone?

In January 2006, Section 20118.2 of the Public Contract Code went into effect, acknowledging the highly specialized and unique nature of technology purchases. It allows districts, upon a finding by the governing board, to procure technology related items based on factors in addition to price, through a competitive negotiation/request for proposal process. Some of the evaluation factors are performance reliability, standardization, life-cycle costs, support logistics, and manufacturer’s warranties.

This alternative procurement process is only available for technology purchases, and does not apply to contracts for construction, or for the procurement of any product that is available in substantial quantities to the general public.

LIABILITY: YOURS, THEIRS, OURS!

Note: In addition to the discussions set forth in this section, liability in various circumstances may often be determined by the specific terms of the contract or purchase order.

ISSUE: WHO’S LIABLE IF YOU EXCEED THE BID LIMIT?

A purchase order accidentally slips by for a public works project that exceeds the $15,000 dollar bid limit. The Purchasing department becomes aware of the error after the work has been completed. Who is liable?

The district assumes all responsibility. It is not the personal liability of the employee that made the error; however, it should be determined whether the error was accidental or intentional. Contracts made in violation of the laws governing competitive bidding may be void and should be reviewed on a case by case basis. Legal Counsel is necessary. Bonds may still be necessary from the contractor, as required by law.

In this situation, your county office of education may refuse to pay without intervention from your Superintendent. Additionally, another competitive vendor may lodge a formal complaint against the district or may even litigate for loss of opportunity.

ISSUE: WHO’S LIABLE FOR A CANCELED ORDER?

A vendor is demanding payment for an order that was canceled before the order was actually shipped. The vendor says that it was a special order item, and they have already received it, so it is too late for the district to cancel.

If the vendor fails to deliver after the promised date, the district can cancel without liability. If cancellation date is prior to the promised shipment date then the district may be liable for damages, usually measured by the resale price plus additional overhead costs. A lot depends on whether the item was manufactured specifically for the district and it would be difficult to re-
sell the item to another party. The other consideration is whether enough time has passed for the vendor to almost complete the manufacturing of the item. If the item is a stocked item and of standard specifications, the district should have no problem canceling the order without liability.

**ISSUE: SHOULD A PURCHASING AGENT HAVE LIABILITY COVERAGE?**

A Purchasing Agent does not need to secure a personal policy for any liability situation. The district is responsible for its agent as long as the Purchasing Agent works within the scope of his/her authority.

Many districts choose to bond the top administrators. This could include the Purchasing Agent.

**ISSUE: WHO’S LIABLE IF A PURCHASE OF EQUIPMENT OR SUPPLIES CAUSES INJURY?**

You have purchased some crayons from a reputable vendor. After they have been used in your kindergarten classes, you find they were considered toxic and not advisable for school use. Who's liable if someone were to be injured?

The reputable vendor is ultimately liable; however, the district would have a measure of liability as well. The district may have to secure legal counsel to defer all liability back to the vendor.

In order to guard against this happening, districts should include a clause regarding hazardous materials and required MSDS within their standard terms and conditions for purchase orders. Additionally, some districts utilize a clause such as the one below:

> Any product shipped with warnings of hazardous or cancer causing materials, either in manufacturing or as finished goods, will not be accepted by the district. Do not ship any products with the above or similar warnings. Items shipped with these or similar warnings will be removed from the package and destroyed according to California requirements. Your company is responsible for any charges incurred for disposal and we will have that amount deducted from your invoice.

**ISSUE: CAN A SCHOOL BE CLOSED DOWN BY CAL-OSHA?**

Your district has been served with a citation from CAL-OSHA for non-compliance in a performance area. Can they shut you down?

Usually not. CAL-OSHA can impose fines on the district until the district complies with the regulation. The Department of Health has the authority to close a school or building if it is deemed unsafe for student and/or employee occupancy.

**ISSUE: CAN YOU BE HELD LIABLE FOR A PURCHASE ORDER THAT HAS YOUR SIGNATURE?**

What level of concern should a Purchasing Agent have if a purchase order that was signed by the agent and issued as a walk-through purchase order was misappropriated by the district employee it was issued to?

Power to contract is vested in the governing board. Actions of the Purchasing Agent must be within delegations or authorizations of the governing board. Most Purchasing Agents are
required to file a Conflict of Interest Affidavit, which means the officer may not personally benefit from the signing of a purchase order. If the Purchasing Agent was involved in the misappropriation, they may be civilly and criminally liable. If misappropriation is without the Purchasing Agent's knowledge, the Agent is not liable.

**ISSUE: YOU HAVE BEEN PERSONALLY NAMED ALONG WITH THE DISTRICT IN A LAWSUIT**

You have just been served with a subpoena in a case where a contractor is suing the district. Do you need to retain a separate attorney?

No. If the lawsuit is in response to your actions as the Purchasing Agent, then the district should pay all legal costs.

**ISSUE: CAN THE DISTRICT BE HELD LIABLE IF AN ITEM SOLD AT A SURPLUS AUCTION INJURES SOMEONE?**

Yes, unless the district provides a disclaimer notice with the item that has been sold. (Please see Appendix A-5 for example of disclaimer notice) **Note: Check with your legal counsel. Recent court cases have found districts liable for unsafe vehicles sold at auction.**

“**ISSUE: IF A RESPONSE GIVEN IN A BID IS THOUGHT TO BE FALSE OR INACCURATE, CAN THE BID BE REJECTED AS NONRESPONSIVE?**

 Probably not, unless the inaccuracy can be determined solely by information provided on the face of the bid. Case law holds that in most cases, the determination of nonresponsiveness will not depend on outside investigation or information. For example, in Great West Contractors, Inc. v. Irvine Unified School District (2010) 187 Cal.App.4th 1425, the bid instructions asked if the contractor had ever been licensed under any name or license number other than the ones given, to which the contractor answered “no”. The District determined this response to be false and rejected the bid on the grounds that it was nonresponsive. According to the Court, the issue was one of responsibility of the bidder, who was therefore entitled to a hearing. The case generally holds that if a bid answers all questions and nothing is inaccurate or in violation of the bid specifications on its face, then any challenge to the accuracy or truthfulness of the information in the bid is not really a matter of responsiveness, but rather a matter of responsibility. Although the Great West Court noted the possibility that a determination of nonresponsiveness could be based on something outside the bid documents, but also observed that no published case had ever reached that conclusion. Therefore, if any outside information is necessary to establish the accuracy or inaccuracy of a bid response, there is risk to deeming the bid nonresponsive rather than non-responsible.”
CONTRACTS

ISSUE: YOU HAVE JUST AWARDED A COPIER PAPER BID TO A VENDOR AND HAVE ISSUED THE PURCHASE ORDER. THE PRICE THAT THE VENDOR BID IS VERY COMPETITIVE. THE VENDOR STATES THEY CANNOT FULFILL THE PURCHASE ORDER AT THAT PRICE DUE TO AN UNFORESEEN PRICE ESCALATION, BUT YOU HAVE A BID. WHAT RECOUSE DO YOU HAVE TO GET THE PAPER AT THE BID PRICE?

Price increases do not excuse performance of the contract unless there is an expressed provision in the contract to that effect. However, inability to obtain merchandise or circumstances beyond any control (“Force Majorere” language) may excuse performance or excuse a delay in performance.

The district may have the right to sue this vendor for non-performance of the contract. Be sure to review your bid conditions addressing performance. A district may have recourse with the surety company, if a bid bond or performance bond are in place; and/or a district may subsequently award the contract to the second lowest bidder.
PCC 5106

ISSUE: YOU HAVE A COMPANY THAT IS PROVIDING CHARTER BUS SERVICE TO YOUR DISTRICT. SHOULD YOU REQUIRE INSURANCE?

Yes. The recommended insurance requirements for companies providing services to a district depend upon the risk involved with such services.

It is a good practice to require all companies providing services to your district to provide insurance covering liability and bodily injury, as well as property damage and Workers’ Compensation. In some instances, professional liability coverage may also be required.

The recommended insurance amount is generally $1,000,000 to $5,000,000 worth of coverage under a combined single limit umbrella policy, depending on the contracted service and the level of risk involved.

ISSUE: I WOULD LIKE TO SECURE A MULTI YEAR CONTRACT FOR ATHLETIC UNIFORM CLEANING. DO I NEED TO REQUIRE A YEARLY CANCELLATION CLAUSE?

Yes. All contracts should require yearly cancellation or termination clauses, with no more than 60 days’ written notice of cancellation required of the district. Automatic renewal clauses, particularly when they specify a renewal for greater than one year, should be avoided.

Additionally, all lease contracts should require a “non-appropriation of funds” clause or rider. This protects the district in cases when funding for a particular contract is no longer available, especially in cases of categorically funded contracts. (See Appendix A-7 for a sample Non-Appropriation Rider)
**ISSUE: WHAT IS THE MAXIMUM DURATION OF A CONTINUING CONTRACT FOR SERVICES OR PURCHASES OF EQUIPMENT, MATERIALS OR SUPPLIES?**

Education Code 17596 stipulates that continuing contracts for work to be done, services to be performed, or for equipment, materials or supplies to be furnished or sold to the district, shall not exceed five (5) years for work or services, or for apparatus or equipment; and shall not exceed three (3) years for materials or supplies.

**ISSUE: WHAT IS THE MAXIMUM AMOUNT OF INTEREST FOR WHICH DISTRICTS CAN LEGALLY COMMIT CONTRACTUAL EXPENDITURES FOR LEASES?**

The term of any lease or lease purchase agreement shall not exceed the estimated useful life of the item. 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 (7 percent for community colleges) above the rate set pursuant to the existing agreement. In no event shall the combined period of the original lease and renewal or extension exceed 10 years.

Ed. Code 17450-17452 - College 81550-81552
PURCHASING POTPOURRI!!!

ISSUE: A SCHOOL SITE WANTS THE DISTRICT DUPLICATION CENTER TO REPRODUCE A PAMPHLET THAT HAS COPYRIGHT PROTECTION. WHAT WILL HAPPEN IF THEY DO IT?

The district may be in violation of the copyright law and would be subject to penalties. PL94-553 states that a fine and/or a possible jail term could be assessed on the person making the copy, not the requester. Statutory damages could accrue as well.

It may be possible to get permission, in written form, from the copyright holder to duplicate the materials. This should always be considered. The “fair use” doctrine as it relates to educational institutions may also apply in certain situations.

ISSUE: SURPLUS SALE ITEMS HAVE A DOLLAR LIMIT PER ED CODE. IS THE LIMIT PER ITEM OR TOTAL? WHAT IS THE LIMIT?

If the governing board by a unanimous vote of those members present, finds that the property, whether one or more items does not exceed in value the sum of $2,500 dollars, it may be sold at private sale without advertising.

If the value is determined to exceed the $2,500 dollar limit, it may be sold but must first be formally advertised and offered for sale, and sold to the highest responsible bidder. An alternative method for disposal would be to sell the item(s) at a public auction.

Ed Code 17545-17546 - College 81450-81452

ISSUE: HOW CAN WE DETERMINE IF A VENDOR IS SOLE SOURCE?

The “sole source” exception to the bid requirement is rarely upheld and it is not recommended that you utilize this exception except in very specific situations. Remember, your governing board must make the determination whether an acquisition is “sole source,” so in many cases, it may be more practical to prepare and award a formal bid. We advise obtaining specific written counsel from your county office of education and/or legal services attorney opinion to determine if a sole source situation exists. (See Appendix A-6 for a detailed discussion.)
QUIZ YOURSELF
SCHOOL DISTRICT ETHICS

Is there an ethical problem involved in any of the following situations?

Yes / No

1. The Associate Superintendent of Business is a one-third partner in a company that manufactures disposable plastic dishes. The Associate Superintendent of Business directs the Director of Purchasing to issue an annual contract for plastic dishes to that company.

2. The buyer is visited a couple of times a year by the sales manager of a large manufacturer from whom the school district buys regularly. They always go to lunch and the sales manager pays.

3. A school district buyer who purchases electronics materials, frequently places orders with her son who is a commission salesman for Ajax Electronics Company.

4. A school district business manager is attending a trade show in Sacramento at his district’s expense. He accepts a supplier’s invitation to spend the weekend after the show at a salesman’s vacation cabin at Lake Tahoe. The business manager and the salesman are longtime personal friends.

5. Upon hearing that you are out to bid for the district’s yearly general school supplies, a board member calls to remind you that one of his more influential constituents owns a large stationery supply company and would do a good job for the district.

6. The superintendent is a one-third partner in a company that prints science books. The buyer receives a requisition from several schools to purchase science books from the company.

7. The business manager accepts a supplier’s invitation to be the supplier’s guest for a dinner and a show.

8. The buyer is in need of a set of tires for his car. He calls the automotive supplies vendor he has done business with for years and:
   a. Asks for a set of new radials for testing.
   b. Buys the tires at the supplier’s cost.
   c. Buys the tires at full retail price.

9. The buyer owns a one-third interest in a small company that manufactures a very specialized and expensive seismometer. The buyer receives a requisition from the Geology Department for ten (10) seismometers. The buyer’s company is specified and a “sole source” justification is attached to the requisition.

Yes / No

10. One week before the close of bidding for the school annual paper contracts, one of
the suppliers brings his bid in and asks to see the other bidders’ prices. (All bids were received sealed.)

a. The school is a public university.

b. The school is a private university.

11. The buyer accepts two tickets to “Chorus Line” from a supplier when the supplier discloses that he and his wife will be out-of-town on the night of the performance.

12. The director of purchasing accepts a prospective supplier’s invitation to fly via the company’s Lear jet, to the supplier’s plant for a facilities inspection.

13. The buyer for the district’s warehouse purchases a large quantity of office supplies on a special, with a widely advertised premium offer. The premium indicated for that size order is a color television.

14. The buyer has been a personal friend of a salesman since high school days. They frequently go to lunch, dinner and various social events together. Their practice is to split the cost of these activities.

15. The local Purchasing Agents Association traditionally asks local companies to contribute raffle gifts for the Association’s annual Christmas parties.

16. Bids are due in your office on Monday no later than 11:00am. A’s bid is in at 10:00am; B’s at 10:30am; and at 10:45am C rushes in and gives you the following explanation: He says he has had a great problem with time but feels that if this had not been so, he could have given you a very good bid. He explains he has submitted a blank bid and asks you to enter a price which is $100.00 lower than the next higher bidder.

17. You have to buy an item for which you can only identify four sources. Two are considered competent, and two not. You would like formal quotations, but would like more than two price comparisons. You decide to send Requests for Price Quote (RFQ’s) to all four suppliers.

18. You receive three bids on a work-to-be-done roofing bid. A, B, and C offer competitive bids on the work per your specification and drawing, but bidder C also offers an alternate based upon a very innovative and unusual method of roofing. Your director of maintenance states that this innovative roofing method is the answer to all of his problems and wants you to give the job to C. You tell him you can’t do that, but that you will re-bid based on C’s alternate method.

19. You are under considerable pressure to get lower prices for the 1,000 or so tires bought each year by the county motor pool. You sense that you can solve this problem by doubling the estimated usage on the quote or bid request.
QUIZ YOURSELF
GENERAL PURCHASING KNOWLEDGE

Yes / No

1. Is a district responsible for providing certification for auto smog system upon sale?

2. Can a purchasing agent be held liable if he/she signs a purchase order for equipment which should have been bid because of monetary amount, but the board instructions were to bypass the bid procedure because they wanted a specific brand which only one company could supply?

3. On bleachers, chairs, or other furniture, if someone is injured because the furniture breaks, falls apart, etc. - is the district partially liable?

4. A bid went out, and two (2) days before it was due to be opened the district realizes the specifications are not correct. It’s too late to send out an addendum, can the district reject all bids?

5. On bid, an order was awarded to the lowest bidder meeting specification for a particular brand of item. The bidder later advises he cannot get that brand, and will provide another which he claims is equal. Can the district accept? Could other bidders be justified in fighting that order?

6. Is a purchasing agent liable if (following a supervisor’s orders) several purchase orders are written to purposely avoid the bidding process for the same types of work or equipment, and the purchase orders are signed by the purchasing agent?

7. Can additional orders be issued using a previous quotation if it would bring the total purchase over the Education Code bid limits?

8. If district equipment is purchased that does not meet OSHA requirements and injury is inflicted on an individual, is the procurement person responsible?

9. Can an unsigned (formal) bid be accepted?

10. Do you need to advertise prevailing labor rates for a formal bid on carpeting installation?

11. Should bid bonds, performance bonds, certificates of insurance, etc., be checked out or verified prior to making an award?

12. Does a traded-in piece of equipment require prior board approval?

13. Can an order be issued to a company owned either wholly or partially, by an employee of the district (or his immediate family)?

14. Does a vendor have to comply with a signed bid when he is unable to supply the requested merchandise as bid due to price increases, inability to obtain merchandise, etc.?
<table>
<thead>
<tr>
<th>Yes/No</th>
<th>Question</th>
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<tbody>
<tr>
<td>____</td>
<td>15. Is it legally required to place all vendors on bidding lists when requested?</td>
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<td>____</td>
<td>16. Can a lease/lease purchase agreement be written beyond a 10 year period?</td>
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<td>17. Is a dual specification legally acceptable?</td>
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<td>18. Should all bid documents for a district incorporate the clause:</td>
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<td>“The Board reserves the right to reject or accept any or all bids”?</td>
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<td>____</td>
<td>19. Legally, do you have to give preference to small and minority businesses?</td>
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<td>____</td>
<td>20. Can you go to trial for photocopying a copyright protected textbook?</td>
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</table>
QUIZ YOURSELF

MATCHING SCHOOL DISTRICT LEGAL CODES

1. K-12 P.C.C. 20112
   College Education Code 81641
   A. ____ $15,000.00 work-to-be-done
   $50,000.00 supplies & equip. (Univ.)
   $50,000.00 supplies & equip. (College)

2. K-12 P.C.C. 20111
   College P.C.C. 20651
   B. ____ Accept securities equivalent to any
   amounts withheld to ensure performance

3. K-12 Education Code 39521
   College Education Code 81452
   C. ____ Publish once-a-week for two weeks,
   open bids third week. (Notice calling for bids).

4. K-12 P.C.C. 20116
   College P.C.C. 20657
   D. ____ Exempt from bidding (Computer
   Software, textbooks, etc.)

5. K-12 P.C.C. 20113
   College P.C.C. 20654
   E. ____ Emergency repairs, alterations, etc.
   without bidding.

6. K-12 Education Code 38083
   F. ____ Exempt from bidding (Special Services)
   (Auditing/Engineering, etc.).

7. K-12 P.C.C. 20118.3
   College Education Code 81651
   G. ____ Property more than $2,500.00
   (Surplus Sale)

8. G.C. 53060
   H. ____ Unlawful to split bids.

9. K-12 P.C.C. 20118
   College P.C.C. 20652
   I. ____ Exempt from bidding (Foodstuffs).

10. P.C.C. 22300
    J. ____ Purchase or lease of goods through
    another public agency within county
    limits, city, town, or district.
### ANSWERS TO QUIZZES

<table>
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<tr>
<th>ETHICS</th>
<th>GENERAL</th>
<th>LEGAL CODES</th>
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<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>A. 2.</td>
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<td>Yes</td>
<td>No</td>
<td>B. 10.</td>
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<td>Yes</td>
<td>Yes</td>
<td>C. 1.</td>
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<td>Yes &amp; No</td>
<td>Yes</td>
<td>D. 7.</td>
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<td>No</td>
<td>No – Yes</td>
<td>E. 5.</td>
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<td>Yes</td>
<td>No</td>
<td>F. 8.</td>
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<td>Yes</td>
<td>Yes</td>
<td>G. 3.</td>
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<td>Yes &amp; No</td>
<td>No</td>
<td>H. 4.</td>
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<td>Yes &amp; No</td>
<td>No</td>
<td>I. 6.</td>
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<td>(a) No</td>
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<td>J. 9.</td>
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<td>(b) No</td>
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<td>Yes</td>
<td>Yes; however it depends on how it is written and if it restrains competitive bidding</td>
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APPENDIX A-1

It is difficult to say with any degree of certainty what a court may decide in regard to this matter. In order to insure that there would be no question if the matter went to court, utilize bid limits for work to be done ($15,000) if any portion of the cost was for work to be done as defined under public works.

If the installation is truly incidental to the purchase or there is no additional charge for the installation, the bid limits for the purchase of the equipment including the installation cost ($90,200 for 2018) could be utilized. For instance, if a district was purchasing computers and the installation consisted of delivering the computers, setting them up, and plugging them in and there is a nominal charge for the installation, the installation could be considered incidental to the purchase and the bid limits for the purchase of equipment could be utilized.

However, if the installation was not incidental and there was a charge for it, the bid limits for work to be done could be utilized. For example, if a district was purchasing computers and the installation consisted of delivering the computers, setting them up, adding new electrical wiring (public works), and plugging them in and if there was a charge for this, the installation would not be incidental to the purchase and if over the $15,000 bid limits for work to be done.

If part of the bid is for work to be done, as defined by public works, and if the bid shows that there is to be payment for this work to be done, the bid limits for work to be done ($15,000) should be utilized. If the work to be done requires special expertise or licenses such as electrical or plumbing it might not be considered incidental. If the work merely involves delivery and setting up the equipment, it would usually be considered incidental to the purchase and if there was no charge the bid limits for the purchase of equipment could be utilized.
Previously Education Code Section 39523 provided for a trade-in of equipment. That code section was eliminated from the Education Code but still remains as EC 81454 for Community Colleges. That section states:

“The governing board of any community college district may dispose of personal property belonging to the district for the purpose of replacement by providing in the notice calling for bids for furnishing new materials, articles, or supplies that each bidder shall agree in his bid to purchase the property being replaced and to remove it from the school grounds and shall state in his bid the amount which he will deduct from the price bid for furnishing new materials, articles, or supplies as the purchase price for the personal property being purchased from the district. The board shall let the contract to any responsible bidder whose net bid is the lowest, or shall reject all bids.”

Although this code does not exist for K-12 school districts any longer, the premise on which it is based is sound advice. The code section provides for information to be included in the “notice calling for bids.” The section provides for letting the contract to “any responsible bidder whose net bid is the lowest.” From the language of Education Code Section it appears that the legislature contemplated a bid procedure in regard to trade in equipment.

Further, the value of the item that is being traded in should not be included in determining, whether or not a district should go to bid. Public Contract Code Sections 20111 and 20651 require school and community college districts to go to bid for contracts, materials or supplies over certain amounts. If the item being purchased is above that amount, the item should be bid regardless of the method of payment for the item. Merely because the item will be paid for partially by a trade-in should not be considered as a reduction of the value of the equipment and the determination on whether or not it should be formally bid.
NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the District of ________________ County, California acting by and through its Governing Board, hereinafter referred to as the District, will receive up to, but not later than _______ o’clock __.m. of the ___________ day of 20___, sealed bids for the award of a contract for

All bids shall be made and presented on a form furnished by the District. Bids shall be received in the office of ________________ and shall be opened and publicly read aloud at the above stated time and place. Each bid must conform and be responsive to the contract documents, copies of which are on file and may be obtained from ________________.

Each bidder may obtain ______ (____) sets of drawings and specifications upon deposit of ____________________ Dollars ($ ) per set. The deposit will be refunded if the drawings and specifications are returned in good condition within ______ (____) days after bid opening. All checks shall be made payable to the above-named District.

Each bid shall be accompanied by (1) the security referred to in the contract documents; (2) the list of proposed subcontractors; and (3) the Noncollusion Affidavit.

The District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification or type of work needed to execute the contract. Holiday rates shall be paid as specified in the collective bargaining agreement applicable to each particular craft, classification or type of work employed on the project. Contractor may also download the most current prevailing wage at: http://www.dir.ca.gov/DLSR/PWD/index.htm

In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post a copy of the determination of prevailing rate of wages at each job site.

The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work shall be at time and one-half. The Contractor and any subcontractor(s) shall pay not less than the specified prevailing rates of wages to all workers employed by them in the execution of the contract. In accordance with provisions of Public Contract Code Section 22300, substitution of eligible and equivalent securities for any monies withheld to ensure performance under this contract will be permitted at the request and expense of the Contractor.

Each bidder shall possess at the time this contract is awarded a Class ________ Contractor’s license, pursuant to Public Contract Code Section 3300. The successful bidder must maintain the license throughout the duration of this contract.
No bidder may withdraw his bid for a period of ________________ (_______) days after the date set for the opening of bids.

The District reserves the right to reject any and all bids or to waive irregularities in any bid.

____________________________________

____________________________________

____________________________________

____________________________________

Director of Purchasing

____________________________________

District, County, State of California
Discussion:

Public Contract Code Sections 20651 and 20111 provide that a community college or school district shall award bids to the lowest responsible bidder. In determining which bid is lowest, it is our opinion that costs of operating and costs of maintaining an item can be taken into consideration as a bid evaluation factor. There does not appear to be any cases or Attorney opinions directly on point in regard to this question.

In theory, the lowest bid should be the bid which costs the district the least. In most construction contracts the cost of building the structure is the biggest factor and the factor which will determine who the low bidder is. Maintenance is usually not that large a factor in the construction project.

However, it would be possible to include the maintenance costs as a factor to determine which bid was the lowest if maintenance or other costs were to be a factor. For example, if a district was requesting bids for installing a filtering system in a swimming pool and desired to consider the possibility of having automated pool cleaning and automated maintenance as an alternative item in the bid, the district could compare the projected costs of maintenance with the costs of a non-automated system and the projected costs of maintenance for the automated system and make a determination as to which would be the lowest bid. However, such criteria would have to be clearly set forth in the bid instructions.

Another way to evaluate bids is to include service costs in the bid evaluation as one of the items in the bid. For example, instead of just having bids to purchase an item, have bids to purchase and service an item for five years. Include cost for supplies that support the operation of the item. If a vendor is offering financing for the item, make sure that this is also taken into consideration because different vendors may offer different rates of financing. Education Code Section 17596 limits the duration of continuing contracts for services. It states:

"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 accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies not to exceed three years."

It is important to make the criteria of award clear in the bid information that such costs factors as service, maintenance, supplies and/ or financing will be considered in the determination of which bidder is the lowest bidder.
This disclaimer must be clear and concise.

(a) DISCLAIMER OF IMPLIED WARRANTIES

ALL PROPERTY SOLD “AS IS” WITH ALL FAULTS AND NO IMPLIED WARRANTY. NO RETURNS ALLOWED. THE SCHOOL DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY ACCIDENT OR INJURY RESULTING FROM PURCHASE OF PROPERTY ON SALE.

(b) DISCLAIMER OF IMPLIED WARRANTIES

All property listed herein, is offered for sale “as is” with all faults, and without recourse against the District. The District makes no guarantee, warranty, or representation, expressed or implied, with regard to condition of property or fitness of property for any use or purpose. No claim will be considered for allowance or adjustments or rescission of the sale based on failure of the property to completely satisfy the purchaser in all respects. No returns allowed. The District shall not be responsible for any accident or injury resulting from purchase of property on sale.
DISCUSSION:

The California Supreme Court has ruled that the reason for having the competitive bidding requirements is to protect the taxpayers from fraud, corruption, and carelessness on the part of public officials and the waste of public funds.

Public Contracts Code Sections 20113 and 20654 provide for an exception to the competitive bidding requirement in the event of an emergency.

There is very limited statutory authority for finding an exception for a “sole source”. (See section C.12 of the August 2012 updated Methods of Purchasing section for a discussion of that limited authority.) Indeed, Public Contracts Code sections 20111 and 20651 regarding competitive bidding each state: “This section applies to all materials and supplies whether patented or otherwise.”

However, judicial decisions have provided an exception from the competitive bidding requirements where the nature of the improvements to be constructed or services to be rendered are such that competitive proposals would be unavailing or not produce an advantage. County of Riverside v. Whitloch (1972) 22 Cal.App.3d 863, 99 Cal.Rptr. 710; Los Angeles Dredging Company v. Long Beach (1930), 210 Cal. 348, 291 P. 839; Los Angeles Gas and Electric Corp. v. Los Angeles (1922), 188 Cal. 307, 205 P. 125. However, these cases generally could do the work or provide the service because of their status as a public utility. The cases also dealt with situations where the government entity has entered into a contract through the competitive bidding process and where unforeseen circumstances arose which required that the work be done in a manner other than called for in the original contract and where it is only possible for the original contractor to do this work. Under these very limited conditions, the courts have provided relief from the strict requirement for competitive bidding. Also, in Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, the Court of Appeal found an exception to public bidding requirements where bidding would not result in any advantage to the public entity in efforts to contract for the greatest public benefit. (The Graydon case is further discussed in Section C.11 of the Methods of Purchasing section of this handbook.) (See Appendix A-6 for a detailed discussion; see also the discussion of Public Contracts Code §3400 and exceptions thereto in Section C.12 of the August 2012 updated Methods of Purchasing section.)

When there are two or more entities which can provide the service or work, a “sole source” exception will generally not be available. A determination as to “sole source” will be dependent upon the facts and law of each case.

As a general rule, what appears to be a “sole source” situation is rarely an exception to the bid requirements. As some county offices of education have noted, they will only authorize approval of “sole source” items which are accompanied by specific counsel or legal services attorney recommendation of approval. A district should consult with their county office of education regarding each specific “sole source” situation. It is also advisable to apply for a written legal opinion regarding a specific “sole source” situation even if it is similar, or even apparently identical to a previous “sole source” situation.
APPENDIX A-7

NON-APPROPRIATION OF FUNDS:

If, for any fiscal year of this agreement, Lessee fails to appropriate or allocate funds for future periodic payments under this agreement, Lessee will not be obligated to pay the balance remaining unpaid beyond the fiscal period of 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 this county designated by Lessor.

Upon termination of the agreement as provided herein, Lessor will recalculate the time balance and refund to Lessee any proportions of interest or other charges unearned or allocatable 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 applicable portion of unpaid current year interest and principal.
**Checklist for Fair Use**

Please complete this analysis to determine whether your proposed use of a copyrighted work may be used within the scope of Fair Use. Remember all four factors need to be analyzed. 

Save this checklist and/or send a copy to copyright@usu.edu

Your Name: _________________________________  Date: ______________________________

**Citation/Description of work to be used:**

Chapter/Article/Scene Title: ______________________________________________________
Total pages/minutes used: ______________________________________________________
Intended use: __________________________________________________________________________
Course (if applicable): __________________________ # of students: __________________

**Citation/Description of original work:**

Author/Editor/Translator: _______________________________________________________
Publisher: _______________________________________________________
Book/Journal/Movie Title: _______________________________________________________
Total length of original work: _______________________________________________________

1. What is the **PURPOSE** of the proposed use? Check all that apply.

<table>
<thead>
<tr>
<th>FAVORS FAIR USE</th>
<th>OPPOSES FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching</td>
<td>Commercial activity (Ask: will this be sold?)</td>
</tr>
<tr>
<td>Research</td>
<td>Profiting from the use</td>
</tr>
<tr>
<td>Scholarship</td>
<td>Entertainment</td>
</tr>
<tr>
<td>Criticism</td>
<td>Bad-faith behavior (Ignoring Copyright Law)</td>
</tr>
<tr>
<td>Comment</td>
<td>Denying credit to original author</td>
</tr>
<tr>
<td>Parody</td>
<td>(Lack of or no attribution given to original author)</td>
</tr>
<tr>
<td></td>
<td>News reporting</td>
</tr>
<tr>
<td></td>
<td>Nonprofit educational institution</td>
</tr>
<tr>
<td></td>
<td>Restricted access (available only to students or other appropriate group)</td>
</tr>
<tr>
<td></td>
<td>Transformative or productive use (Change the work for new utility, adds value to the work or does not diminish the market)</td>
</tr>
</tbody>
</table>

2. What is the **NATURE** of the copyright work from which it will be used? Check all that apply.

<table>
<thead>
<tr>
<th>FAVORS FAIR USE</th>
<th>OPPOSES FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual or nonfiction based</td>
<td>Highly creative work (art, music, film, plays)</td>
</tr>
<tr>
<td>Important to favored educational objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>
3. What **AMOUNT** of the copyrighted work will be used? Check all that apply. You should measure the amount of material both quantitatively and qualitatively. Evaluate quantity relative to the length of the entire work and the amount needed. (The reproduction of an entire work weighs against fair use.) A reproduction that is relatively small but still uses the “heart” of the work will also weigh against fair use.

<table>
<thead>
<tr>
<th>FAVORS FAIR USE</th>
<th>OPPOSES FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Small quantity of work to be used</td>
<td>□ Large portion or entire work to be used</td>
</tr>
<tr>
<td>□ Portion used is not central or significant to entire work</td>
<td>□ Portion used is central to work or “heart of the work.”</td>
</tr>
<tr>
<td>□ Amount is appropriate for favored educational purpose</td>
<td>□ Fiction</td>
</tr>
</tbody>
</table>

4. What is the **EFFECT** on the market or potential market if this item is used? Check all that apply. Reproduction that substitutes for the purchase of the original weighs heavily against fair use.

<table>
<thead>
<tr>
<th>FAVORS FAIR USE</th>
<th>OPPOSES FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ User owns (lawfully acquired or purchased copy of original work)</td>
<td>□ Made openly accessible on the internet or in other public forum</td>
</tr>
<tr>
<td>□ One or a few copies made</td>
<td>□ Numerous copies made</td>
</tr>
<tr>
<td>□ No significant effect on the market or potential market for copyrighted work</td>
<td>□ Significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td>□ No similar product marketed by the copyright holder</td>
<td>□ Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>□ Lack of licensing mechanism</td>
<td>□ Reasonably available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td></td>
<td>□ Affordable license fee available for using work</td>
</tr>
<tr>
<td></td>
<td>□ Repeated or long-term use desired</td>
</tr>
</tbody>
</table>

**Completed Analysis:** (Check one of the following statements after completing the checklist.)

- Save this checklist and/or send a copy to copyright@usu.edu
- Based on the fair use analysis completed above, I have determined that my use of the material falls within the fair use exception.
- Based on the fair use analysis completed above, I have determined that my use of the material does not fit within the fair use exception. I will attempt to obtain permission from the copyright owner before using the materials.

Signature: ________________________________ Date: ____________________________

Position/Title: _____________________________

Notations:  
* Adapted from documents prepared by the Copyright Management Center, Indiana University, Purdue University Indianapolis; the University of North Carolina's 2001 Copyright Policy; and Brigham Young University Copyright Licensing Office.
METHODS OF SCHOOL PURCHASING
METHODS OF PURCHASING

Historically, school purchasing departments have used the requisition, the purchase order and the invoices as the main method of acquiring products. In today’s economic climate, it seems that there are other ways of doing so. These methods should be considered in your operation:

A. INFORMAL METHODS OF PURCHASING

1. Revolving Cash Fund
   a. Reimbursement of Transaction

   The Revolving Cash Fund is one of the least expensive and one of the most expeditious methods of acquiring products. Education Code (42800) authorizes the establishment of funds with the consent of the county superintendent of schools. These funds can be established either at school or district level within the Education Code limits. A written policy is recommended.

   b. Pre-Payment of Transactions

   Checks may be prepared for an established amount to accompany the purchase order. Education Code (42804) limits the use of this form of purchasing.

   c. Prepayment Fund

   Another form of pre-payment is the use of a prepayment fund as authorized in the Education Code (42821) for an amount not to exceed $1,000. A purchase order accompanied by a blank check is provided to the vendor who is to fill in the date and amount upon shipment. The blank check must be restricted in dollar value and show a void date. All monthly list of transactions must be approved by the board prior to replenishment of this fund.

2. Open / Blanket Orders

   Where recurring purchases of relatively small value may be expected from a single vendor throughout a period, an “open purchase order” to the vendor may be appropriate to permit authorized individuals to purchase unspecified materials as needed through a defined period of time, such as a fiscal year. Purchase of groceries for a Home Economics teacher from a nearby supermarket is an example. Considerable control is forfeited by an open order, and it may be prudent to curb possible abuse or misuse by imposing restrictions on the face of the purchase order and the user. These might include:
   a. Specifying or limiting the categories of material (for example, no equipment)
   b. Naming those authorized to use the order.
   c. Limiting the total amount of the purchase order.
   d. Limiting the size of any one purchase.
   e. Limiting total monthly purchase.
   f. Defining the expiration date of the purchase order.
   g. Requiring all material to be inspected and accounted for by a separate receiving person at its destination.

Updated: February 2018
Open purchase orders may be issued for major purchases and awarded as a result of formal bidding and may specify pricing provisions, discounts, payment terms, delivery arrangements, back order policies, etc.

4. Purchase Requisition/Order Form

Most districts now utilize an electronic requisition format which is directly linked to the District’s financial records for verification of funds before proceeding to the Purchasing Departments. Requisitions are routed using electronic paths pre-set up and one approved provides an electronic signature indicating approval. Requisitions typically include the vendor name and address, description of goods or services, quantities, price, account information, and any specific instructions not included in the PO terms and conditions.

For districts using paper requisitions and purchase orders, the information required would be the same and routing would be done manually.

B. FORMAL METHODS OF PURCHASING

1. Written Quotation

A written quotation or proposal is a method of obtaining prices from one or more vendors to supply an identified item or service. The quotation clearly identifies what is expected from the vendor, whereas a solicited proposal is predicated on the vendor’s interpretation of the district’s requirement.

2. Advertised Bid-Public Contract Code 20111

The Public Contract Code specifies a dollar level at which formally advertised bids must be secured by the district before awarding a contract.

Work to be Done $15,000

Supplies/Equipment $50,000 (updated annually) (verify current year limit)

Cost of many items has led to the formation of cooperative purchasing ventures. Various government entities have consolidated their requirements to obtain these lower prices. Examples are:

a. County Contracts – Normally these are annual requirements type contracts awarded by the County Purchasing Department and usable by government and educational agencies within the County.

b. State Contracts – awarded by the Procurement Division of the Department of General Services for a wide range of equipment, supplies and materials. [http://www.dgs.ca.gov/pd/Home.aspx](http://www.dgs.ca.gov/pd/Home.aspx)

c. County Superintendent of Schools Contract - County Superintendents may award contracts for use by school districts enabling them to
cooperatively purchase school supplies, materials and equipment on a joint basis.

d. Joint Powers Agreement – some schools or school districts and cities have consolidated their requirements in bidding for various categories of equipment, materials and supplies to obtain favorable pricing. Specific Board action and Resolutions to authorize participation in such cooperative purchasing efforts are required. Do not assume such joint ventures will automatically obtain the lowest possible cost. Each district must make a finding that a cooperative contracts serves the best interest of the district.


The governing board of a school district 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. It is important to note that the Public Contract Code does not authorize districts to “piggyback” on other public agency’s service contracts.

Effective January 1, 2007, Public Contract Code section 20118 has been amended to clarify that a district is not required to make payment to the other public agency but may make payment directly to the vendor. Unfortunately, the parallel section for community college districts, Public Contract Code section 20652, was not amended. There may, nevertheless, be reasonable arguments to be made for community college districts that they may pay vendors directly. The issue, however, is uncertain. Pub. Contract Code §§ 20111, 20118/20652. In 2006 the California Attorney General issued an opinion (89 Op. Att’y Gen. 1) that concluded Public Contract Code section 20118 may not be used to contract with another public agency to acquire factory-built modular building components for installation on a permanent foundation. This conclusion appears to be being accepted by school attorneys throughout the State. Footnote 4 of the opinion, however, stated in part, “The statute provides no authority for a school district contract directly with a lessor or vendor.” As noted above, this conclusion is made moot for school districts by the amendment of Public Contract Code section 20118 discussed above.

f. The governing board of a school district is also authorized to purchase materials, equipment or supplies through the State Department of

To take advantage of the exception in Public Contract Code, section 20118/20652, the governing board of a district is required to make a determination that a purchase through a public corporation or agency is in the best interests of the district. The board may then authorize the public corporation or agency, by contract, lease, requisition, or purchase order, to make a purchase on its behalf. Such authorization, enables the public corporation or agency to include in its advertisement for bids, the quantity or nature of the personal property desired by the district.

For many years the application of Public Contract code sections 20118/20652 has been stretched to cover a wide variety of acquisitions. The 2006 opinion of the California Attorney General appears to have reined in some of the broadest interpretations of the statute which arguably allowed true construction projects to be undertaken without bidding for modular buildings. This practice is clearly not authorized by the statute which expressly pertains to personal property, not property which will be installed on a permanent foundation.

PCC Section 20118/20652 states that the governing board of a school district ". . . may authorize by contract, lease, requisition, or purchase order, any public corporation or agency to lease . . . purchase . . . for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases . . . ." If the public corporation or agency through which a district purports to make a purchase is required to competitively bid for its purchases, then the purchases it makes on behalf of a district must also be competitively bid. In the last example used above, the purchase of six (6) relocatables directly from the vendor by District B does not satisfy the requirement that the purchase be made for the district in the manner in which District A is authorized by law to make purchases, because the six (6) relocatables were not advertised by District A.

g. Acquisitions from California Multiple Award Schedules (CMAS) Including Acquisitions of Information Technology Goods and Services (Pub. Contract Code, §§ 10290 - 10299 and 12100.)

The Procurement Division of the California Department of General Services can provide purchasing assistance to local agencies such as school districts and community college districts without the necessity for the districts to go to bid. Public Contract Code section 10298, subdivision (a), allows the Director of General Services to:
“consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100) [regarding the acquisition of technology goods and services], establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state’s buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290) [the so-called “CMAS” provisions].”

Section 10298 also allows for participation in an “Alternative Protest Process” pursuant to Chapter 3.6 (commencing with Section 12125) for bid protests. Participation in this process is permissive. Section 10298, subdivision (a) specifically states “State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.” Section 10298, subdivision (b), goes on to authorize the Director of the Department of General Services to make the services of the Department available “upon the terms and conditions agreed to, to any . . . district, or other local governmental body or corporation empowered to expend public funds . . . .” Thus, the authority for community college districts to use these acquisition procedures appears clear. On its face the section also appears to be applicable to school districts.

h. Cooperative Purchasing: Several organizations have formed purchasing cooperatives, which offer multiple public agencies the ability to pool resources to procure goods and services in bulk and for reduced cost. A school district can procure goods and services with cooperative purchasing either by forming a JPA with the cooperative’s lead public agency or through a piggyback contract. Either way, it is important that the underlying contract complies with California law and was procured in accordance with California Public Contract Code requirements.

i. Joint Powers Agencies: The California Government Code allows two or more public agencies to jointly exercise any power common to the parties, including the purchase of equipment, materials, and supplies, by formation of a joint powers agency (“JPA”). (Cal. Gov’t. Code § 6502.) To form a JPA, the governing body of the public agency¹ must authorize the creation of the JPA, which is typically achieved through a resolution, and there must be an agreement in place between the two public entities. (Cal. Gov’t Code § 6502.)

¹ “Public agency” includes, but is not limited to, the federal government or any federal department or agency; this state, another state or any state department or agency; a county, county board of education, county superintendent of schools; city; public corporation; public district; regional transportation commission of this state or another state; or any joint powers authority formed pursuant to this article by any of these agencies. (Cal. Gov’t. Code § 6500.)
The agreement governing the JPA 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.

3. Lease and Lease/Purchase

Leasing and lease/purchase is a valuable method for acquisition of equipment. Vendors and lending institutions have found that they can loan capital to school districts as tax exempt loans at rates far below commercial loan rates. Every multiple year lease must contain the standard municipal leasing clause which makes it possible for a district to terminate a lease at the end of any fiscal year without penalty.

4. Indexing – Escalation Clause

Indexing is a method of providing flexibility in cost when fixed pricing is not obtainable. Indexing permits an established contract price to rise or fall proportionately with a recognized published commodity listing.

C. GUIDELINES FOR PURCHASING OR LEASING EQUIPMENT/SUPPLIES OR CONTRACTING FOR WORK TO BE DONE:

1. Equipment or Supplies
   PCC 20111 PCC 20651
   to be bid if cost exceeds $50,000 [Updated annually, 2014 - $84,100]

2. Work to be Done
   PCC 20111 PCC 20651
   to be bid if cost exceeds $15,000

3. Pupil Transportation
   (EC 39802) to be bid if cost exceeds $10,000

As previously stated, the Public Contract Code generally requires that school districts competitively bid any contracts for the lease or purchase of equipment, materials, supplies or services and accept the lowest priced bid. However, there is an exception specific to procurement of transportation services by school districts.

California Education Code section 39802 provides:

In order to procure the service at the lowest possible figure consistent with proper and satisfactory service, the governing board shall, whenever an expenditure of more than ten thousand dollars ($10,000) is involved, secure bids pursuant to Sections 20111 and 20112 of the Public Contract Code whenever it is contemplated that a contract may be made with a person or corporation other than a common carrier or a municipally owned transit system or a parent or guardian of the pupils to be transported. The governing board may let the contract for the service to other than the lowest bidder.
In other words, public bidding is not required for transportation contracts under $10,000 or transportation services procured from a common carrier, a municipally owned transit system, or a parent or guardian of the pupils to be transported. (A municipally owned transit system is defined as a transit system owned by a city, or by a district created under Part 1 of Division 10 of the Public Utilities Code. (Cal. Educ. Code § 39800.) Otherwise, school districts do have to go through a bidding process to procure transportation services, but are given flexibility in the selection process to allow them to evaluate factors others than price, such as proper and satisfactory service.2

4. Perishable Foodstuffs and Seasonal Commodities
(EC 38083) exempt from bidding unless using federal funds. (See Section E.)

5. Supplementary Textbooks (Library books, educational films, audio-visual materials, test materials, workbooks, periodicals) exempt from bidding P.C.C. 20118.3

6. Special Services (Advice in Financial, Economic, Accounting, Engineering, Legal or Administrative matters) GC 53060) exempt from bidding

7. Unlawful to Split Projects
P.C.C. 20116/20657

“It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.”

8. Changes or Alterations Of Contracts
P.C.C. 20118.4

a. The dollar limits previously specified - $15,000; $84,100
b. Ten (10%) percent of the original contract price – except for districts with 400,000 ADA where the original contract is for reconstruction or rehabilitation work.

9. Electronic Data-Processing Systems and Supporting Software; procurement or maintenance
P.C.C. 20118.1

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2 Districts created under Part 1 of Division 10 of the Public Utilities Code are listed as: transit districts in counties of Alameda or Contra; San Francisco Bay Area Rapid Transit District; Southern California Rapid Transit District; Orange County Transit District; San Joaquin Regional Transit District; Yolo County Transportation District; Marin County Transit District; San Diego County Transit District; the Santa Barbara Metropolitan Transit District; Santa Cruz Metropolitan Transit District; Santa Clara Valley Transportation Authority; Golden Empire Transit District; Sacramento Regional Transit District; Santa Clara County Transit District; Sonoma-Marin Area Rail Transit District; and Monterey-Salinas Transit District.
The governing board of any school district may contract with an acceptable party who is one of the three lowest responsible bidders for the procurement or maintenance, or both of electronic data-processing systems and supporting software in any manner the board deems appropriate.

10. Conversion of lease to purchase

A lease contract which includes an option to purchase is convertible to a purchase contract without bidding and advertising if all of conditions a through c are met:

a. The original (lease/option) contract was competitively advertised and bid.

b. The original (lease) contract contained the option to purchase price and terms.

c. The equipment purchased by exercising the option is the equipment leased. However, if the original contract did not have to be advertised and, at the time of exercising the option, the option-to-purchase amount is below the bidding and advertising requirements, the purchase is exempt. A straight lease without an option to purchase is convertible to a purchase without bidding and advertising only if the purchase price at the time of conversion is less than the competitive bid limit.

11. Sole source or patented goods: The purposes of competitive bidding statutes are to secure economy in the construction of public works and the expenditures of public funds for materials and supplies needed by public bodies; to protect the public from collusive contracts; to exclude favoritism and corruption and to promote competition among bidders so as to ensure that all public contracts are secured at the lowest cost to taxpayers. 64 Am.Jur. 2d, Public Works and Contracts, 37.

However, where competitive bidding proposals do not produce an advantage, a statute requiring competitive bidding does not apply. The law in California on this point holds that where competitive bidding works an incongruity and is unavailing as affecting the final result, or where it does not produce any advantage or it 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. 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. Competitive bidding statutes should not be construed so as to defeat their purpose or impede public business.

In Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631, the court discussed the situations in which exceptions to competitive bidding have been upheld as follows:

This principle has been held applicable in California decisions in a variety of situations involving both the purchase of services and products and the construction of public improvements and buildings where it has appeared that competitive bidding would be incongruous or would not result in any advantage to the public entity in efforts to contract for the greatest public benefit. It has also been applied in fact situations in which the government
entity has entered into contracts for personal services depending upon a peculiar skill or ability (Kennedy v. Ross, supra, 28 Cal.2d 569; San Francisco v. Boyd, supra, 17 Cal.2d 606; Miller v. Boyle, supra, 43 Cal.App. 39; contracts for the purchase of patented products (Hodgeman v. City of San Diego (1942) 53 Cal. App. 2d 610; contracts for the provision of services or the construction of public improvements by a government regulated monopoly (Los Angeles G. & E. Corp. v. Los Angeles, supra, 188 Cal. 307; County of Riverside v. Whitlock, supra, 22 Cal.App.3d 683); contracts for experimental or unique products and/or services (Hiller v. City of Los Angeles, supra, 197 Cal.App.2d 685); and actions or contracts for the acquisition or disposition of property for a particular use and with a special value to one person (Orange County Water Dist. v. Bennett, supra, 156 Cal.App.2d 745; Meaking v. Steveland, Inc. supra, 68 Cal.App.32d 490).

12. Limiting Brands – “Or Equal”: Public Works. Where public works contracts are required to be awarded after public competitive bidding, “it is a long and well-established rule that the proposals and specifications inviting such bids must be free of any restrictions tending to stifle competition.” (Baldwin-Lima-Hamilton Corp. v. Superior Court of San Francisco (1962) 208 Cal.App.2d 803, 821; see also 47 Ops.Cal.Atty.Gen. 158, 160 (1966).) In California, Public Contract Code section 3400 controls this subject area, specifically prohibiting a school district from drafting specifications for bids, in connection with the construction, alteration, or repair of public works, (1) so as to limit the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words “or equal” so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency must, if aware of an equal product manufactured in this state, name that product in the specification. Specifications must provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of “an equal” item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

The “of equal” requirement of section 3400 is expressly not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes: (1) in order that a field test or experiment may be made to determine the product’s suitability for future use; (2) in order to match other products in use on a particular public improvement either completed or in the course of completion; (3) in order to obtain a necessary item that is only available from one source; (4) in order to respond to an emergency 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; or (5) 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. In those instances, a specific brand or trade name can be required in the bid.
Also, Government Code section 4333 provides that in any advertisement for supplies no bid shall be asked for any article of a specific brand or mark nor any patent apparatus or appliances, when such requirement would prevent proper competition on the part of dealers in other articles of equal value, utility, or merit.

The current effect of section 4333 on school districts is uncertain, for two reasons. First, section 4333 is part of the California Preference Law (Govt Code §§ 4330-4334), which is of questionable constitutionality. The purpose of the California Preference Law is to require the state, counties and cities to give a preference to California produced products (Govt. Code § 4331), however, the California Attorney General has concluded that it is unconstitutional since it affects foreign commerce and constitutes an unconstitutional intrusion into exclusive federal domain. (53 Ops.Cal.Atty.Gen.72 (1970).) This conclusion was based upon Bethlehem Steel Corp. v. Board of Commissioners (1969) 276 Cal.App.2d 221, which held the California Buy American Act (Govt Code §§ 4300-4305) unconstitutional. It is not clear from the Attorney General’s opinion whether Government Code section 4333 could be segregated from the unconstitutional provisions of the California Preference Law so that it may be validly applied.

Second, there is a question whether Government Code section 4333, notwithstanding its facial applicability to school districts, would be found not applicable to school districts. As the provision was originally enacted in 1897 as Political Code section 3247, it clearly was limited in its application to the state, cities and counties. Further, the 1943 recodification of this provision into the Government Code was not intended by the Legislature as a substantive change in the law.

Despite these uncertainties, Government Code section 4333 points out the general policy of the law that all bidders having articles of equal value, utility and merit should be permitted to participate in the competition. (31 Ops.Cal.Atty.Gen. 161, 165 (1958).)

Even if Government Code section 4333 does not statutorily prohibit the use of specific brand or trade names, your attorney may conclude that where the purchase of the equipment is subject to competitive bidding requirements, the specification of a particular brand of product would restrict competition among bidders and, thus, be invalid. With respect to specifications calling for a particular product by brand name, the California Attorney General has stated as follows:

Where competition is required, the specification of patented materials or equipment is upheld where all bidders may obtain and supply the article. [Citation omitted.] But, where the specifications are worded to restrict the bidding to one manufacturer’s product, the bidding procedure is invalid [citation omitted], unless . . . no real comparison may be made between different articles or materials and, thus, competitive bidding is unnecessary. Hodgeman v. City of San Diego (1942) 53 Cal.App.2d 610; 47 Ops.Cal.Atty.Gen. 158 (1960).

Because the principles involved are the same, your attorney may conclude that while Public Contracts Code section 3400 does not apply to the letting of contracts for the purchase of equipment, a court would likely consider its
standard reasonable for the purchase of equipment subject to competitive bidding requirements.

13. Emergency Contracts for Public Works: 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 of a school district or a community college district may, by unanimous vote and 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, or (2) authorize the use of day labor or force account for the purpose. (Pub. Cont. Code §§ 20113, 20654.)

In Marshall v. Pasadena Unified School District (2004) 119 Cal.App.4th 1241, the Court of Appeal determined that the definition of emergency in Public Contract Code section 1102 must be read into the terms of section 20113. Section 1102 defines an emergency as a “sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate loss or impairment of life, health, property, or essential public services.” In Marshall, the Court held that since there had been no “sudden, unexpected occurrence” that posed a clear and imminent danger requiring prompt action to protect life, health, property or essential public services, there was no emergency within the meaning of sections 1102 and 20113.

D. SPECIFICATIONS

A specification is a statement which describes any requirement; i.e. construction, equipment, supplies or services with such clarity and completeness that there is no question by any knowledgeable parts as to what quality is required or what functions are to be performed. Three approaches to writing specifications are: (1) Make and Model (Brand or Trade Name); (2) Description; (3) Performance Specifications. Construction (Public Works) specifications are not dealt with here since these are usually developed by technical experts such as architects or engineers hired for that purpose.
1. TYPES OF SPECIFICATIONS

a. The Make and Model (Brand or Trade Name) specification is commonly used to establish the quality desired. The trade name must always be followed by the phrase “or equal” as required by law unless a minimum of two brands are named. Brands used as specifications must be well known and catalogs must be readily available which list the specified items with numbers and general description. Provision should be made in the bid form for a space for bidder to write in the particular make and model that he is bidding, and a notation should state that if no other make and model is listed the bidder is offering that which is specified. All alternate offers should be tested and analyzed thoroughly against the established criteria or quality.

b. The Descriptive specifications consists of a detailed description which indicates size, color, materials, options, accessories, electrical, and any features necessary to establish an acceptable level of quality. Utilization of industry standards and federal specifications can greatly simplify in many instances the buyer’s job. Blue prints or dimension sheets are another common way of establishing quality specifications where dimensional limits are required. When using these, the information must be clear and the dimensions completely specified, and the tolerances expressed with clarity of language or terminology.

c. The Performance specification details the end result and the function desired as simply as possible, with the performance limits or variables clearly specified. It normally makes no attempt to specify details except possible limits in dimension and weight and generally makes no effort to specify composition or materials. The intent of this type of specification is to utilize the technical staff of any supplier to its utmost in obtaining the most practical, efficient and competitive solution to the buyer’s requirement. This type of specification is often used to obtain services.

E. FOOD SERVICE PURCHASES

Special requirements apply to contracts with Food Service Management Companies (FSMC) that perform one or more activities of a food service operation on behalf of a school nutrition program sponsor (such as a school district), including bookkeeping, menu development, preparation of reimbursement claims, organization and maintenance of program documents (such as daily meal counts, menus, and menu production records), meal preparation and service, consulting services, and purchasing services. (California Department of Education, Food Service Management Company Services Procurement (June 2012) http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp (as of September 18, 2012.).) Federal regulations require that districts annually submit all new contracts, corresponding bid documents, and/or annual contract extensions to the California Department of Education, Nutrition Services Division, for approval. Contracts may be valid for up to one year from the date they are signed by all parties and may be renewed for up to four additional one-year terms.

Federal regulations require that all purchases of goods and services using food service revenues follow federal procurement regulations. (EDGAR 2016 – Code of Federal Regulations). Sponsors electing to contract with a food service management company must adhere to a competitive bidding process. Under the federal rules, some of the examples of situations considered to be inappropriately restrictive of 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) noncompetitive pricing practices between firms or between affiliated companies; (4) noncompetitive awards to consultants that are on retainer contracts; (5) organizational conflicts of interest; (6) specifying on a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process. (7 C.F.R. §3016.36(c) (2012).)

If the total annual value of the contract is less than the applicable bid threshold, an informal bid process can be used. For contracts that are equal to or exceed the applicable bid threshold, a formal bid process must be used. For school districts, the bid threshold is established in Public Contract Code section 20111(a) and is adjusted annually.

For informal bidding, the district must write a description of the services being sought and provide the same information to a minimum of three agencies which the district contacts to obtain price quotes for the services. For each contacted agency, the sponsor must retain the following information: (1) the name of the agency; (2) the name of the contact person; (3) the phone number; (4) the quoted price; and (5) for the selected agency, a rationale for the selection and accepted bid price.

For formal bidding, the process is much more detailed and may include, but is not limited to, the following activities:

- Advertising in a public manner, typically a local newspaper;
- Providing a Request for Proposal or Invitation for Bid to agencies known to provide the desired services; (PCC 20111 amended on January 1, 2018, allows for the use of RFPs for all goods and services purchased for a Child Nutrition Program)
- Offering facility review visits; and
- Establishing a date and time for opening bids.

As in the informal bid process, the formal bid process requires the district to document the bid process and include a rationale for the selection of the bidder and the awarded contract amount. The district must maintain the bid documentation for the duration of the contract, or in the event of a contract and/or procurement process audit finding, three years beyond the final resolution of the findings. Regardless of the bid process used, districts must award the contract to the lowest bidder that best meets their needs. (See, California Department of Education, Food Service Management Co. Services Procurement, supra.)

Federal law requires districts to have protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to the California Department of Education. Also, contracts with food service management companies must include federally required clauses contained the Code of Federal Regulations, title 7, sections 3019.48, 3016.36(i), 210.16(a), and 250.12(d). Finally, districts are prohibited from awarding a contract to any vendor that prepared or had a significant role in developing the contract and related bid documents.
PURCHASING/ACCOUNTING TERMINOLOGY

Along with Accounting and Business Terms, this glossary contains selected terms and definitions related to State and Local Government purchasing that are intended to make the terms understandable and usable by public purchasing representatives; thus practical rather than legally perfect definitions are included. Some of the definitions have appeared in specialized and technical glossaries and dictionaries. Some of these definitions have been borrowed exactly as earlier used, others have been modified. The sources from which definitions have been borrowed, either in whole or in parts include:

Purchasing and Traffic Abbreviations, Courtesy of the Purchasing Agents Association of New York, Inc.
Excerpt from the MSDS User's Guide, courtesy of Shell Oil Company.

DefinitionsContained in the Uniform Commercial Code

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<td>Accept</td>
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<td>Bearer form</td>
<td>Document</td>
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ACKNOWLEDGEMENT - A form used by a vendor to advise a purchaser that his order has been received. It usually implies acceptance of the order.

ACT OF GOD - A danger that could not be avoided by human power; any natural cause of damage which is irresistible (e.g. hurricane, flood, lightning), and which is in no way connected with negligence.

ADVERTISING – See, Formal advertising; Legal notice.

ADVICE - A notice sent to a purchaser advising that shipment has gone forward and usually containing details of packing, routing, etc.

AGENCY - (1) A relationship between two parties by which one, the agent, is authorized to perform or transact certain business for the other, the principal: also, the office of the agent. (2) An administrative division of the government.

AGENT - A person authorized by another, called a principal, to act for him.

ALL OR NONE—BID - A bid for a number of different items, services, etc., in which the bidder states that he will not accept a partial award, but will only accept an award for all the items, services, etc. included in the bid. Such bids are acceptable only if provided for in the Invitation for Bid or if the bidder quoted prices for all items, services, etc., and is actually the low bidder for every one.

ALTERNATE BID - (1) A response to a call for alternate bids. See, Alternate bid, call for (2) A bid submitted in knowing variance from the specifications. Such a bid is only acceptable when the variance is deemed to be immaterial.

ALTERNATE BID, CALL FOR - An Invitation for Bids for a single need that can be filled by commodities of varying materials, dimensions, or styles. Bidders may submit one or more bids for each material, style, etc. and only one award will be made based on an assessment of what is best for the agency, taking price as only one factor involved.

ANTICIPATION - An amount taken off a bill when an invoice is paid in advance of the discount or net due date. Granted in addition to any discounts, it is calculated at the stated percentage rate for the number of days between that of actual payment and the due date.

ANY QUANTITY PRICE - A rate charged irrespective of the order volume.

ANTITRUST LEGISLATION - Laws that attempt to prevent or eliminate monopolies and to prevent noncompetitive practices.

APPROPRIATION - Legislative sanction to use public funds for a specific purpose. Money set apart for a specific use.

APPROVED BRANDS LIST - See, Qualified products list.
ARBITRAGE - Buying in one market and selling simultaneously in another in order to profit from price variances.

AS IS - An expression signifying that goods offered for sale are without warranty or guarantee. The purchaser has no recourse on the vendor for the quality or condition of the goods.

AWARD - The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

AUTHORIZED DEVIATION - Permission given to a supplier authorizing production or delivery of items within stated limits other than those specified originally.

BACK DOOR BUYING - Making a purchase without going through the central purchasing authority.

BACK ORDER - That portion of an order, which a vendor cannot deliver at the scheduled time and which he has re-entered for shipment at a later date.

BEST INTEREST OF THE STATE (CITY, COUNTY OR LOCAL GOVERNMENT) - A term frequently used in granting the purchasing official the authority to use his discretion to take whatever action he feels is most advantageous to the government. The term is used when it is impossible to anticipate adequately the circumstances that may arise so that more specific directions could be delineated by the law or regulations.

BID - An offer, as a price, whether for payment or acceptance. A quotation specifically given to a prospective purchaser, upon his request, usually in competition with other offers. Also, an offer from a buyer to a seller, as at an auction.

BID AWARD FILE - A file that is divided into commodity and item sections, each of which contains listings of who was solicited for individual bids, what each response was and other information. The bid award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

BID BOND - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to sign the contract as bid. See, Bid deposit, Bid security.

BID DEPOSIT - A sum of money or check, deposited with and at the request of the government, in order to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, he forfeits the amount of the deposit. See, Bid bond; Bid security. See also, Forfeiture of deposit or bond.

BID OPENING - The process through which the contents of bids are revealed for the first time to the government (agency. etc.) to the other bidders, and usually to the public. See, Public bid opening.

BID SAMPLE - A sample required by the invitation for Bids to be furnished by bidders as part of their bids to establish a quality level for the products being offered.
BID SECURITY - A guarantee in the form of a bond or deposit that the bidder, if selected, will sign the contract as bid; otherwise, the bidder (in the case of a deposit) or the bidder or his guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. See, Bid Bond; Bid Deposit.

BIDDER - Any person who makes a bid.

BIDDERS LIST – A list maintained by the purchasing authority setting out the names and addresses of suppliers of various goods and services from who bids proposals and quotations can be solicited. See, Prequalification of bidders, Qualified bidder.

BILL - A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale; an invoice.

BILL OF MATERIALS - A list specifying the quantity and character of materials and parts required to produce or assemble a stated quantity of a particular product.

BILL OF SALE - A written agreement transferring ownership of property from one party to another.

BLANKET ORDER - A purchase arrangement in which the purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often overthe-counter basis. Such arrangements set a limit on the period of time they are to be valid and the maximum amount of money which may be spent at one time or within a period of time. See, Openend contract; Price agreement; Requirements contract.

BLANKET PURCHASE - See, Blanket order.

BONA FIDE - In good faith.

BOND - An obligation in writing, binding one or more parties as security for another.

BRAND NAME - A product name which serves to identify that product as having been made by a particular manufacturer, a trade name.

BRAND NAME SPECIFICATION - A specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the quality level desired. See, Equal, or equal.

BREACH OF CONTRACT - A failure without legal excuse to perform any promise which forms a whole or part of a contract. See Forfeiture of deposit or bond.

BREACH OF WARRANTY - Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.

BULK PURCHASING - Purchasing in large quantities in order to reduce the price per unit; volume purchasing.

BUYER See, Purchasing agent, See also, Uniform commercial code.
BUYER’S MARKET — Market conditions in which goods can easily be secured and economic forces of business tend to cause goods to be priced at the purchaser’s estimate of value.

BUYER’S ROUTE OF ROUTING - When the vendor does not pay freight costs, the purchaser has the option of routing. When the vendor is to prepay freight, the purchaser’s right to name the carrier must be exercised before actual shipment of goods and must be made at the contract of sale. If vendor violates buyer’s orders as to carrier or route, vendor is responsible on all risks of transportation.

CASH IN ADVANCE - Payment is to accompany purchaser’s order.

CASH DISCOUNT - A discount from the purchase price allowed the purchaser if he pays within a specified period. See Discount.

CASH ON DELIVERY (COD) - Payment due and payable upon delivery of goods.

CATALOG - A listing of item identifications arranged systematically.

CAVEAT EMPTOR - “Let the buyer beware.” A maxim that stands for the rule, that the buyer should be careful in making a purchase because the burden of defective goods rest him. The vendor can be made to take the responsibility for some defects through specifications and warranties.

CAVEAT VENDITOR - “Let the seller beware.” A maxim relating to situations where the vendor bears the responsibility for defects in the goods he sells.

CENTRAL PURCHASING AUTHORITY - The administrative unit, in a centralized purchasing system with the authority, responsibility and control of purchasing activities.

CENTRALIZED PURCHASE - A system of purchasing in which the authority, responsibility and control of purchasing activities is concentrated in one administrative unit.

CERTIFICATE OF COMPLIANCE - A supplier’s certification that the suppliers or services in question meet certain specified requirements.

CERTIFICATE OF NON-COLLUSION - A statement signed by a bidder and submitted with his bid to affirm that his bid is made freely without consultation with any other bidder.

CERTIFIED CHECK - A check endorsed by a bank, guaranteeing its payment.

CHANGE ORDER - A purchaser’s document used to modify or add to a purchase order.

CLAIM - The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such a demand.

CLASSIFICATION OF PURCHASER - Buyers are classified by vendors (e.g.; retailer, wholesaler, distributor, etc.) and are granted prices and discounts established by the vendor for these categories.
CODE OF ETHICS - A written set of guidelines within which judgments and considerations of professional ethics and behavior should be made. See purchasing ethics.

COLLUSIVE – A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

COLLUSIVE BIDDER - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding. See corrupt combination, collusion, or conspiracy in restraint of trade fixing.

COMMERCIAL LAW - That branch of the law that designates the rules that determine the rights and duties of persons engaged in trade and commerce.

COMMERCIAL LAW - That branch of the law that designates the rules that determine the rights and duties of persons engaged in trade and commerce.

COMMODITY - An article of trade, a moveable article of value, something that is bought or sold, and a movable or tangible thing that is produced or used as the subject of sale.

COMPETITION - The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quantity and service.

COMPETITIVE BIDDING - The offer of prices by individuals or firms, competing for contract privileges or right to supply specified services or merchandise.

COMPETITIVE NEGOTIATION - A technique for purchasing goods and services. Usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried out with each bidder, and the best offer (in terms of performance, quality of items, price, etc.) as judged against proposal evaluation criteria, is accepted; negotiated award.

CONDITIONAL SALE - A sale made with the understanding that the seller will retain the title until a specified requirement has been met.

CONFIRMING ORDER - A purchase order issued to a vendor, listing the goods or services and terms of an order placed verbally, or otherwise, in advance of the issuance of the usual purchase document.

CONFLICT OF INTEREST - A situation wherein an individual as part of his duties must make a decision or take action that will affect his personal interest.

CONSIDERATION - Acts, promises, or things of value exchanged by two parties and serving as the basis for a contract between them.

CONSULTANTS AND EXPERTS - Those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service.

CONTINGENCY - A possible future event or condition arising from presently known or unknown causes the outcome of which is indeterminate at the present time.

CONTRACT - A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts. See, Uniform Commercial Code.
CONTRACT - An oral or written legally binding mutual agreement between two competent parties. An accepted purchase order becomes a contract.

CONTRACT ADMINISTRATOR - The management of all facets of contracts to assure that the contractor’s total performance is in accordance with his contractual commitments, and that the obligations of the purchaser are fulfilled. In government, this management is conducted within the framework of delegated responsibility and authority and includes the support of using agencies.

CONTRACT MODIFICATION - An alteration that introduces new details or cancels details but leaves the general purpose and effect of the contract intact.

CONTRACT RECORD - A record providing full particulars regarding the orders placed for delivery of goods in a contract so that the volume of purchases against the contract can be determined.

CONTRACTOR - One who contracts to perform work or furnish materials in accordance with a contract.

CONTRACTUAL SERVICES - Services furnished under a contract in which changes effective periods, and extent or work are defined.

CONVENIENCE TERMINATION CLAUSE - A contract clause which permits the government to terminate, at its own discretion, the performance of work in whole or in part and to make settlement of the vendor’s claims in accordance with appropriate regulations.

CONVEYANCE – (1) A document usually called a deed which transfers the title or other interest in land from one party to another. (2) The type of carrier in which goods are transported (railroad, automobile, barge truck, airplane, etc).

COOPERATIVE PURCHASING - The combining of requirements of two or more political entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

CERTIFICATE OF PARTICIPATION - Corrupt combination, collusion, or conspiracy in restraint of trade. A phase referring to an agreement between two or more businesses to stifle control, or otherwise inhibit free competition in violation of state and/or federal antitrust statutes. See, Collusive bidding; Price fixing.

COST PLUS - A pricing method allowing the vendor to charge whatever his costs may be plus a fixed percentage of that cost.

COUNTEROFFER - An offer to enter into a transaction on terms varying from those originally proposed. An “acknowledgement” may be a counteroffer.

CONVENT - A written promise under seal. It is sometimes used in the place of the word contract.

DAMAGES - Compensation usually in money, for injury to goods, persons, or property.
DEAD STORAGE - Storage of goods for a relatively lengthy period of time. These goods are often preserved in a manner that prohibits their immediate issue in usable conditions.

DEBARMENT - A shutting out or exclusion for cause (as a bidder from the list of qualified bidders).

DEBT - Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the word may include obligations other than to pay money, such as the duty to render services or deliver goods.

DEFAULT - Failure by a party to a contract to comply with contractual requirements; vendor failure.

DEFECT - A non-conformance of an item with specified requirements.

DELIVERY - The transfer of possessions, in shipping, occurs when the carrier submits the bill of lading or title to the goods to the recipient.

DELIVERY SCHEDULE - The required or agreed time or rate of delivery of goods or services purchased for a future period.

DELIVERY TERMS - Conditions in a contract relating to freight charges, place of delivery, time of delivery, and method of transportation.

DEPRECIATION - Decrease in value of a capital asset because of use, deterioration, inadequacy, or obsolescence.

DESCRIPTIVE LITERATURE - Information, such as charts, illustrations, drawings and brochures which show the characteristics or construction of a product or to explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information, such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

DESIGN SPECIFICATION - A purchase specification delineating the essential characteristics that an item bid must possess to be considered for awards and so detailed as to describe how the product is to be manufactured.

DESIGNATION OF SPECIAL PURPOSE - A technique used when purchasing items for a special use for which no items of that kind are produced (e.g.; sewing machines for teaching blind people to sew), accomplished by sending out the specification on the basic item with a description of the special purpose for which the item is to be used, and a questionnaire asking what modifications bidders are willing to make on their standard products to meet the particular needs.

DISCOUNT - An allowance or deduction granted by the seller to the buyer, usually when certain stipulated conditions are met by the buyer, which reduces the cost of the goods purchased. However, discounts may be granted by the seller without reference to stipulated conditions. An example of such use of discount is the application of discount to a nominal or “List” price to
establish the “net” or actual price. See, Cash discounts; Standard package discount; Trade discount.

DISCOUNT SCHEDULE - The list of discounts applying to varying quantities of goods or applicable to differing classifications of purchasers.

DISPOSITION - Acting to remove from the premises and control of a using agency goods that are surplus or scrap.

EMERGENCY PURCHASE - A purchase made without following the normal purchasing procedure in order to obtain goods or services quickly to meet an emergency.

EQUAL, OR EQUAL - A phrase(s) used to indicate the substitutability of products of similar or superior function, purpose, design, and/or performance characteristics. See, Branch name specification.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM - A plan to include minority groups or other disadvantaged persons in the work force of businesses affected by the plan.

EQUIPMENT - Personal property of a durable nature which retains its identity throughout its useful life. See, Uniform commercial code.

ESCALATION CLAUSE - A clause in a purchase contact providing for upward adjustment of the contract price if specified contingencies occur; price escalation clause.

ETHICS - See, Code of ethics; Purchasing ethics.

EVALUATION OF BID - The process of examining a bid after opening to determine the bidder’s responsibility, responsiveness to requirements, and other characteristics of the bid relating to the selection of the winning bid.

EXHAUSTION OF ADMINISTRATIVE REMEDIES - A legal doctrine to the effect that where an administrative remedy is provided by statute, relief must be first sought from the administrative body, and all attempts to obtain such administrative relief must be used up before the complaining party may look to the courts for relief. EX PARTE - “From only one side or party.”

EXPEDITE - To hasten or to assure delivery of goods purchased in accordance with a time schedule, usually by contact by the purchaser with the vendor.

EXPRESS WARRANT - Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.

EXTEND, OPTION TO - A part of a contract which contemplates a continuance of the original contract for a future time upon compliance with the conditions for the exercise of the option.

FACTOR - An agent for the sale of merchandise who may hold possession of the goods in his own name or that of his principal. He is permitted to sell and to receive payment for the goods.
FAIR MARKET VALUE - A price that would induce a willing purchaser to purchase or willing seller to sell in an open market transaction; the price a property would bring at a fair sale between parties dealing on equal terms.

FIDELITY BOND - A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of an employee.

FIELD PURCHASE ORDER - A limited and specific purchase order used in situations where authority to make the type of purchase involved has been delegated to using agencies.

FIFO - “First in, first out.” In cost determination, a pricing technique used in the issuance of materials that requires the cost of the materials first acquired to be recorded first for current issues.

FINDER - A broker who brings together a purchaser and vendor, paid by the party who hired him.

FIRM BID - A bid that binds the bidder until a stipulated time of expiration.

FIRM OFFER - An explicit proposal to enter into a sales contract. Not to be confused with a “firm bid” which is often termed a “firm offer” in colloquial usage.

FISCAL YEAR - A period of 12 consecutive months selected as a basis for annual financial reporting, planning, or budgeting.

FIXED PRICES CONTRACT - A contract for a firm price under which the contractor bears the full responsibility for profit or loss.

FOLLOW UP - See Expedite.

FORFEITURE OF DEPOSIT OR BOND - A loss by omission, negligence, or misconduct for the performing of or the failure to perform a particular act (e.g. not accepting a contract when an award is made; breach of contract.) See, Bid bond; Bid deposit; Fidelity bond: Performance bond.

FORMAL ADVERTISING - The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on specific purchases that it intends to make. See, Legal notice.

FORMAL BID OR OFFER - A bid which must be forwarded in a sealed envelope and in conformance with a prescribed format to be opened at a specified time.

FORWARD PURCHASING - the purchasing of quantities exceeding immediate needs; e.g. in anticipation of a price increase or a future shortage.

FORWARD SUPPLY CONTRACT - A contract for future supply of definite quantities of materials or services over a fixed period. May be drawn off by “draw off orders” or delivered at a fixed and predetermined rate set out in the contract.
FRAUD - A positive act resulting from a willful intent to deceive another with the purpose of depriving him of his rights or property.

FULL COST RECOVERY FUNDING - See, Industrial funding.

FUNGIBLE GOODS - Goods such as grain or money of which any unit is treated as equivalent of any other unit in mercantile usage.

FUTURES - Contracts for immediate sale but future delivery of commodities.


GAAP - Generally Accepted Accounting Principals.

GENERAL PROVISIONS - The mandatory (by law or regulation) clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions.

GENERIC NAME — Relating to or characteristic of a whole group or class; not protected by trademark registration.

GENERIC SPECIFICATION - See, Design specification.

GOODS — Anything purchased other than services or real property. See Uniform commercial code.

GROSS NEGLIGENCE - The degree of lack of care that shows a reckless disregard for life or safety, or that indicates a conscious indifference to the rights of others.

GUARANTEE - To warrant, stand behind, or ensure performance or quality, as a supplier in relation to his product.

HEDGING - A practice of selling for future delivery utilized by dealers or processors to protect themselves against loss. Any profit due to subsequent price increases is also sacrificed.

IDENTICAL BID - A bid that agrees in all respects with another bid.

IMPREST FUNDS — Funds set aside as a cash reserve for expenditures made in accordance with established policies and controls; petty cash.

IMPROPER INFLUENCE - Domination by the actions of one person over the actions of another so as to prevent the proper exercise of the latter’s discretion.

INDUSTRIAL FUNDING - Full financing of program activities out of sale of goods or services furnished; full cost recovery finding.

INELIGIBLE BIDDER - A supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other similar reasons, cannot meet the qualifications for placement on the bidders list or for award.
INFORMAL BIDDER - An unsealed competitive offer conveyed by letter, telephone, telegram, or other means.

INSPECTION - Critical examination and/or testing of items to determine whether they have been received in the proper quantity and in the proper condition and to verify that they conform to the applicable specifications.

INSPECTION REPORT - A report to inform the purchasing authority of the quality or condition of the items delivered. IN-STATE PREFERENCE - See, Preference.

INVENTORY - A stock of goods or an itemized list of a stock of goods on hand at a particular time. When ascertained by a physical count of the items it is a “physical inventory” when determined from records maintained for routine business activities, it is a “book inventory.”

INVITATION FOR BIDS - A request verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services.

INVOICE - A bill sent to buyer for payment. It shows quantity, price and nature of goods or services delivered.

ITEM - Any product, material, or service.

JOBBER - A dealer who purchases goods or commodities from manufacturers or importers for resale to retailers.

KNOCKED DOWN (KD) - The term means that the article described is delivered unassembled. When an article is shipped “kd,” it must be reduced in size by one third or as specified in the carrier’s tariff to be eligible for the applicable freight rate.

LABOR SURPLUS – A geographical section of concentrated unemployment or underemployment, as designed by the U.S. Department of Labor.

LANDED PRICE - Vendor’s price which includes the cost of the goods, transportation and other costs relating to delivery to the location specified by the purchaser.

LATE BID OR PROPOSAL - A bid or proposal which is received at the place designated in the Invitation for Bids after the hour established by the invitation as the time by which all bids or proposals must be received.

LATENT DEFECT - A defect which could not be discovered by ordinary and reasonable inspection.

LEAD TIME - The period of time from date of ordering to date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.

LEASE - A contract conveying from one person (lessor) to another (lessee) real estate or personal property for a term in return for a specified rent or other compensation.
LEASE-PURCHASE AGREEMENT - A rental contract in which the renting party’s periodic payments or parts thereof are applied both to fulfill the rental obligation and as installments for eventual ownership of the commodity upon completion of the agreement.

LEGAL NOTICE - The notice that is required by law. Legal notice for some purchases may be the posting of an announcement of the purchase in a public place, the notification of the appropriate bidders from the bidder’s list, a formal advertisement in a newspaper or newspapers, or a combination of these methods. See, Formal advertising.

LICENSE - A non-transferable permission granted by a government or other author to perform an act or to engage in an enterprise that is restricted or regulated by law.

LIFE-CYCLE COSTING - A procurement technique which considers operating, maintenance, acquisition price and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item’s function is required.

LIFO - "last in, first out." In cost determination, a pricing technique used in the issuance of materials that requires the cost of the materials last acquired be recorded first for current issues.

LINE ITEM - A procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information and which, under the terms of the invitation, is usually susceptible to a separate contract award.

LIQUIDATED DAMAGES - A specific sum of money, set as part of a contract, to be paid by one party to the other if he should default on the contract.

LIST PRICE - The published price for an item that a vendor uses for informing customers and potential customers.

LOCAL PREFERENCE - See, Preference.

LOCAL PURCHASE - A purchase by an agency for its own use or for the use of another agency logistically supported by it.

LOWEST AND BEST BID - See, Lowest responsible bidder.

LOWEST RESPONSIBLE BIDDER - That bidder who is awarded a contract because his bid in unit price, total cost of operation, or value per dollar is lower than any of the bidders whose reputation, past performance, and business and financial capabilities are such that they would be judged by the appropriate government authority to be capable of satisfying the government’s needs for the specific contract. Virtually the same as “lowest and best bid,” “lowest responsive and responsible bidder,” and “most advantageous bid, price and other factors considered.”

LUMP SUM - A price agreed upon between vendor and purchaser for a group of items without breakdown of individual values; a lot price.

MANUAL - See, purchasing manual.
MANUFACTURER - One who (1) controls the design and production of an item, or (2) produces an item from crude or fabricated materials, or (3) assembles materials or components with or without modification, into more complex items.

MARKET (NOUN) - The aggregate of forces that determine the prices and amount of trade in the exchange of goods.

MARKET (VERB) - To carry out all activities intended to sell a product or service. Includes advertising, packaging, surveying the potential market, etc.

MARKETABLE TITLE - A title of such character that no reasonable and intelligent person would question its validity.

MATERIAL(S) - Supplies required to perform a function or manufacture an item particularly that which is incorporated into an end item or consumed in its manufacturer.

MATERIAL SAFETY DATA SHEETS - Document outlining chemical composition use, and hazards of various supplies.

MERIT SYSTEM - A system of selecting and promoting civil servants on the basis of competitive examination or other comparable objective evaluation of their abilities rather than by political appointment.

MISREPRESENTATION - A manifestation by words or other conduct that, under the circumstances, amounts to an assertion not in accordance with the facts.

MISTAKE IN BID - A miscalculation in composing a bid resulting in an incorrect price or other term which may affect the bidder’s eligibility to be awarded the contract.

MOCK-UP - A model, usually full size and constructed of inexpensive material, made for the purpose of studying the construction and use of an article or mechanical device. See, Pilot model; Prototype.

MODIFICATION - Any formal revision of the terms of a contract.

MONOPOLY - (1) An exclusive right or power to carry on a particular activity. (2) The ownership or control of enough of the supply of or market for a product or service to stifle competition control prices, or otherwise restrict trade.

MULTIPLE AWARDS - The award of separate contracts to two or more bidders for the same commodities in situations where the award of a single contract would be impossible or impractical.

MUTUAL - The state where the parties to a contract agree to all the terms and conditions in the same sense and with the same meaning.

NATIONAL SECURITY CLAUSE - Stipulations in particular contracts for the sale or lease of government property which specify government rights to that property in case of a national defense emergency as declared by the Secretary of Defense.
NEGLIGENCE - The failure to do that which an ordinary, reasonable, prudent person would do, or the doing of some act which an ordinary, prudent person would not do. Reference must always be made to the situation, the circumstances, and the knowledge of the parties.

NEGOTIATED AWARD - See, Competitive negotiation.

NET PRICE - Price after all discounts, rebates, etc., have been allowed.

NET TERMS – See, Discount. NO BID - A response to an Invitation for Bids stating that the respondent does not wish to submit a bid. It usually operates as a procedural device to prevent debarment from bidders list for failure to submit bids.

NONRESPONSE BID - A bid that does not conform to the essential requirements of the Invitation to Bids; nonconforming bid, unresponsive bid.

OBSOLESCENT - Becoming obsolete, due usually to technological development.

OBSOLETE - Out of date; no longer in use.

OFFER - The act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.

OLIGOPOLY - A market situation in which a few companies control or dominate the market for a product or service.

OPEN_ACCOUNT PURCHASE - A purchase made by a buyer who has established credit with the seller. Payment terms are usually stated to require payment of invoice on or before a specific date or dates; also to require payment of invoice in full, or less a certain percentage for prompt payment. Such terms are agreed upon between buyer and seller at the time of placing the order, or before.

OPEN-END CONTRACT - A contract in which quantity or duration is not specified such as requirements contract. See, Blanket order; Price agreement; Requirements contract; Terms contracting.

OPEN INSURANCE POLICY - A type of insurance covering shipments for a designated time or a stated value and not limited to a single shipment.

OPEN-MARKET PURCHASE – A purchase usually of a limited dollar amount, which is made by buying from any available source, as opposed to buying from a bidder who has responded to an Invitation for Bids.

OPEN TO BUY - (1) A retailer's term referring to the largest total price or volume of an item available for purchase; (2) the volume or total price of goods remaining to be purchased against a specific requisition.

OPTION - The right, acquired for consideration, to buy or sell something at a fixed price within a specified time.
OPTION TO EXTEND - See, Extend, option to.

OPTION TO RENEW - A contract clause that allows a party to elect to reinstitute the contract for an additional term. OR EQUAL - See, Equals Or equal.

ORDER - A request or command issued to a supplier for goods or services at a specified price. See, Uniform commercial code.

ORDER FORM. - A form by which a supplier is informed of an order.

ORDER LEVEL - The level of stock of any item at which an order is initiated for more supplies of that item.

ORDER RECORD - A central numerical register of orders issued.

ORIGINAL EQUIPMENT MANUFACTURER (OEM) - Seller’s classification of a buyer whose purchases are incorporated into a product he manufactures usually without changing the item which he acquires.

PACKING LIST - A document which itemizes, in detail, the contents of a particular package or shipment.

PARTNERSHIP - An agreement under which two or more persons agree to carry on a business for profit, sharing in the profits and losses by an agreed to proposition, but each being liable for losses to the extent of all of his personal assets.

PATENT - A grant made by a government to an inventor, which gives the inventor the exclusive right to make, use, and sell the invention for a period of years.

PATENT CLEARANCE - A letter or other formal communication stating that the reporting requirements of the patent rights clause contained in a contract have been complied with by the contractor.

PENALTY CLAUSE - A clause in a contract specifying the sum of money to be paid if the contractor defaults on the terms of his contract, particularly in respect to time.

PERFORMANCE - A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to bidder’s inability to complete the contract as agreed. See, Forfeiture of deposit or bond.

PERFORMANCE RECORD - Record to indicate a supplier’s ability to keep delivery promises and reliability, together with consistency of quality of the product.

PERFORMANCE SPECIFICATION - A specification setting out performance requirements that have been necessary for the item involved to perform and last as requested.

PERISHABLE GOODS - Goods which are subject to spoilage within a relatively short time.
PERSONAL PROPERTY - Everything which is not real property which is subject to ownership.
and which has exchangeable value.

PETTY CASH - See, Imprest funds.

PILOT MODEL - A model, usually handmade, used in production planning for production 
engineering studies. See, Mock-up; Prototype, POLITICAL SUBDIVISION- A subdivision of a 
State which has been delegated certain functions of local government, and which can include 
counties, cities, towns, villages, hamlets, and parishes.

PORT OF ENTRY - A port, officially designated by the government at which foreign goods and 
persons are legally admitted into the receiving county.

PREFERENCE - An advantage in consideration for award of a contract granted to a vendor by 
reason of vendor’s residence, business location or business classification (e.g.; small business).

PREPAID - A term denoting that transportation charges have been or are to be paid at the point 
of shipment.

PREQUALIFICATION OF BIDDERS - The screening of potential vendors in which a 
government considers such factors as financial capability, reputation, management, etc. in order 
to develop a list of bidders qualified to bid on government contracts. See, Bidders list; Qualified 
bidder.

PRICE - The amount of money that will purchase a definite quantity weight, or other measure of 
a commodity.

PRICE AGREEMENT - A contractual agreement in which a purchaser contracts with a vendor 
to provide the purchaser’s requirements at a predetermined price. Usually it involves a minimum 
number of units, orders placed directly with the vendor by the purchaser and limited duration of 
the contract (usually one year). See, Blanket order; Open-end contract; Requirements contract; 
Term contracting.

PRICE AT THE TIME OF DELIVERY - A term used in sales contracts when market prices are 
so volatile that a vendor will not give a firm price or use an escalator clause but will only agree 
to change the price that he is charging all customers for similar purchases on the day he ships 
or delivers the goods in question.

PRICE COMPETITION - The selection of a contractor, from two or more competing firms, based 
either solely on prices submitted, or on the final prices resulting from negotiation with all 
competing contractors within a range.

PRICE CONTROL - The fixing or restricting of prices especially by a governmental agency.

PRICE ESCALATION CLAUSE - See, Escalation clause.

PRICE FIXING - Agreements among competitors to sell at the same price, to adopt formulas for 
the computation of selling prices, to maintain specified discounts, to establish lower prices
without prior notification to others, or to maintain predetermined price differentials between different quantities, types, or sizes of products. See, Collusive bidding; Corrupt combination, collusion, or conspiracy in restraint of trade.

PRICE MAINTENANCE - The establishment by a manufacturer or wholesaler of a price for an item below which he will not sell or permit his product to be sold by others.

PRICE PREVAILING AT THE DATE OF SHIPMENT - An agreement between purchaser and vendor that the selling price may be modified by the vendor between the order and delivery dates.

PRICE PROTECTION - An agreement by a vendor with a purchaser to grant the purchaser any reduction in price which the vendor may establish on his goods prior to shipment of the purchaser’s order. Price protection is sometimes extended for an additional period beyond the date of shipment.

PRICE REBATE - An allowance on price, usually given after the completion of the contract and most frequently based on some relationship with the business turnover.

PRICE SCHEDULE — The list of prices applying to varying quantities of kinds of goods.

PRINCIPAL - One who employs an agent; a person who has authorized another to act on his account and subject to his control.

PRIORITY - The degree of precedence given to a particular requisition order, or contract to obtain completion delivery, or performance on a particular date at the expense if necessary, of competing demands to the same supplier or facility.

PROCUREMENT - The process of obtaining goods or services, including all activities from the preparation and processing of a requisition through receipt and approval of the final invoice for payment. The acts of preparing specifications, making the purchase and administering the contract are involved. See, Purchasing cycle.

PRODUCTION CENTER - A production unit, generally a processing machine or production lineup, against which certain overhead charges are prorated.

PROFESSIONAL BEHAVIOR - See, Code of ethics; Purchasing ethics.

PRO FORMA INVOICE - An invoice received before a sale is consummated, informing the buyer of the terms of sale. Pro forma invoices are often used in foreign trade as the buyer's proof of future sale when applying for import licenses and foreign exchange through government agencies.

PROGRAM - A scheme of action to accomplish a definitive objective covering a major area of an organization’s responsibility.

PROGRESS PAYMENTS - Payments agreed upon in connection with purchase transactions which require periodic payments before delivery for certain stated amounts. The entire purchase
price may be due in advance of delivery, or partially in advance and partially after delivery. Progress payments are generally required in contracts for building construction and often for specially designed machinery and equipment.

PROPRIETARY ARTICLE - An item made and marketed by a person or persons having the exclusive right to manufacture and sell it.

PROPRIETARY INFORMATION - Information or data describing technical processes tools, or mechanisms that a business wishes to keep from general public view in order to maintain its competitive position in the market. See, Trade secret.

PROPOSAL - An offer made by one party to another as a basis for negotiations for entering into a contract.

PROPOSAL EVALUATION CRITERIA - Weighted standards, relating to management capability technical capability, approach in meeting performance requirements, price, and other important factors that are used for evaluating which bidder in a competitive negotiation has made the most advantageous offer.

PROTEST - A complaint about a governmental administrative action or decision brought by a bidder or vendor to the appropriate administrative section with the intention of achieving a remedial result.

PROTOTYPE - A model suitable for evaluation of design, performance, and production potential of a system, subsystem, or components. See, Mock-up; Pilot model.

PUBLIC - The people of an area.

PUBLISH BID OPENING - The process of opening and reading bids, conducted at the time and place specified in the Invitation to Bid and/or the advertisement and in the view of anyone who wishes to attend. See, Bid opening.

PUBLIC POLICY - that which is deemed by courts to be general and will-settled public opinion relating to the duties of man and government.

PUBLIC RECORD - All information about government activities that is available for public inspection.

PURCHASE - To acquire property or services for a price.

PURCHASE ORDER - A purchaser’s document used to formalize a purchase transaction with a vendor. A purchase order when given to a vendor should contain statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

PURCHASE REQUISITION - A form used to request the purchasing department to purchase goods or services from vendors.
PURCHASING CHARGE ORDER - See, Charge order.

PURCHASING CYCLE - The cycle of activities carried out by a purchasing department in the acquisition of goods and services. See, Procurement.

PURCHASING ETHICS - Moral principles that apply to the personnel of the purchasing department and all people who are involved in the purchasing process, particularly with respect to the use of government funds and relationships between buyers and sellers. See, Code of ethics.

PURCHASING MANUAL - A formal collection of instructions relative to procedures to be followed by all parties when making use of or dealing with the purchasing department in procurement actions.

PURCHASING OFFICIAL - The administrative official who most directly oversees the activities of purchasing agents and those other aspects of property management that are joined as separate or subordinate sections under individual administrative control.

PURCHASING PUBLIC - The process of obtaining goods and services for public purposes following procedures implemented to protect public funds from being expended extravagantly or capriciously.

QUALIFIED BIDDER - A bidder determined by the government to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list. See, Bidders list; prequalification.

QUALIFIED PRODUCTS LIST - A specification which is developed by evaluating various brands and models of an item and listing those that are determined to be acceptable as the only ones for which bids may be submitted; an approved brands list.

QUALITY ASSURANCE - A planned and systematic series of actions considered necessary to provide adequate confidence that a product that has been purchased will perform satisfactorily in services.

QUALITY CONTROL - The procedures and policies used to ensure adequate quality of goods produced or received.

QUALITY DISCOUNT - An allowance determined by the quantity or value of a purchase. See, Discount.

QUOTATION - A statement of price, terms of sale, and description of goods or services offered by a vendor to a prospective purchase, the stating of the current price of a commodity; the price so stated.

REBATE - A sum of money returned by a vendor to a purchaser in consideration of the purchase of a specified quantity or value of goods usually within a stated interval.
RECEIVING REPORT - A form used by a receiving function to inform other, such as the purchasing and accounting departments of the receipt of goods purchased.

RENEGOTIATION - Deliberation, discussion, or conference to change or amend the terms of an existing agreement.

RENEW, OPTION TO - See, Option to renew.

REORDERING LEVEL - The stock level at which a requisition for the replenishment of the stock should be initiated.

REPUDIATION OF CONTRACT - A positive and unequivocal refusal to perform a contract.

REQUIREMENT CONTRACT - A contract in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified period. See Blanket order; Open-end contract; Price agreement; Term contracting REQUISITION - An internal document by which a using agency requests the purchasing department to initiate a procurement.

RESEARCH AND DEVELOPMENT (R&D) - The process by which new products or new products forms are created; precedes production.

RESPONSIBLE BIDDER - A bidder whose reputation, past performance, and business and financial capabilities, are such that he would be judged by the appropriate government authority to be capable of satisfying the government's needs for a specific contract.

RESTRAINT OF TRADE - The effect of contracts or combinations which eliminate or stifle competition effect a monopoly, artificially maintain prices, or otherwise hamper or obstruct the course of trade and commerce as it would be carried on if left to the control of natural and economic forces.

RESTRICTIVE SPECIFICATIONS - Specifications that unnecessarily limit competition by eliminating items that would be capable of satisfactorily meeting actual needs.

RETENTION - The withholding of a part of the purchase payment due until the purchase has been finally accepted as fully meeting specifications. The amount retained as well as the period of retention is stated in the sale contract.

ROYALTY - Compensation for the use of property payable to the owner, vendor, or lessor. Royalty payments are usually calculated as a percentage of the selling price of a good or service, production of which utilizes that property, or as a stated sum per period (e.g.; monthly, annually).

RULES AND REGULATIONS - Governing precepts and procedures made by an administrative body or agency under authority that sometimes have the force and effect of law.

SALE TAX - A tax levied upon a vendor for ‘a sale’ of merchandise.
SALVAGE - Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused.

SAMPLE - A small portion of goods taken as a specimen of quality.

SCHEDULED PURCHASE - A purchase for which a bid opening date is prescheduled so that using agencies’ requirement for the period covered by the contract can be gathered and combined for the Invitation for Bids.

SCRAP - (1) Fragments of material removed in manufacturing. (2) Manufactured items or parts rejected or discarded and useful only for their basic material content.

SEALED BID - A bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; usually required by the purchasing authority on major procurements to ensure fair competition among bidders.

SEASONAL - Depending upon the season, either climatic or economic, and usually cyclic on an annual basis.

SEASONAL RATE - A rate instituted for specified articles or commodities and effective only for certain periods of the year.

SECURED ACCOUNT - An account on which the purchaser assumes liability for the debt incurred by a purchase transaction is settled or at the time of delivery. The usual types of instruments are promissory note, letter of credit, draft, bill of exchange, mortgage, or trade acceptance.

SELLER’S LIEN - The right of a seller to retain possession of goods until payment is received except where goods are sold on credit.

SELLER’S MARKET - A market condition favorable to vendors which exists when the forces of supply and demand keep prices at a relatively high level.

SELLER’S OPTION - Seller’s privilege to require the buyer to purchase at an agreed price and within a given period of time.

SERVICE - Work performed to meet a demand, especially work that is not connected with manufacturing a product.

SERVICE CONTRACT - A contract that calls for a contractor’s time and effort rather than for a concrete end product.

SHIPPING LIST - A memorandum listing all items shipped at one time on a given order.

SHIPPING RELEASE - A purchaser’s form stating instructions of goods purchased for delivery at an unspecified future date or to an undisclosed destination. It is also used to specify quantities to be shipped when the purchase was for an unspecified quantity and when delivery is to be made in partial lots at the purchaser’s discretion.
SHORT SALE - A sale of a commodity for future delivery that you do not yet own, but expect to be able to purchase at a lower market price before the delivery date.

SINGLE-SOURCE PROCUREMENT - An award for a commodity which can only be purchased from one supplier usually because of its technological, specialized, or unique character.

SMALL BUSINESS - A designation for certain statutory purposes referring to a firm, corporation, or establishment having a small number of employee, low volume of sales, small amount of assets, or limited impact on the market.

SMALL BUSINESS ADMINISTRATOR - A federal agency created to foster and protect the interest of small business concerns.

SOLICITATION - The process of notifying prospective bidders the government wishes to receive bids on a set of requirements to provide goods or services. The process might consist of public advertising, the mailing of Invitations for Bids, the posting of notices, or telephone calls to prospective bidders.

SOVEREIGN IMMUNITY - The principle which absolves the sovereign (State, city, county) from responding in damages for past injuries to another party.

SPECIFICATION - A description of what the purchaser requires and, consequently what a bidder must offer to be considered for an award.

SPECIFICATIONS COMMITTEE - A committee whose purpose is to advise and assist the central purchasing authority in establishing specifications. This committee may also offer advice and assistance in developing standards. See, Standards committee.

SPOT PURCHASING - A one-time purchase made in the open market out of necessity or to take advantage of a bargain price.

STANDARD - A characteristic or set of characteristics for an item that, for reasons of quality level, compatibility with other products etc. is generally accepted by the manufacturers and users of that item as a required characteristic for all items of that sort.

STANDARD PACKAGE DISCOUNT - An allowance applied to goods supplied in the vendor's regular package. See, Discount.

STANDARD SPECIFICATION - A specification established through a standardization process to be used of all or most purchases of the item involved.

STANDARDIZATION (OF SPECIFICATIONS) — The process of examining specifications and needs for items of similar end usage and drawing up one specification that will meet the needs for most or all purchases of that item.

STANDARDS COMMITTEE - A committee whose purpose is to advise and assist the central purchasing authority in establishing standards and, in some cases, specifications. See, Specifications committee.

STANDING ORDER - See, Blanket order.
STATEMENT OF ACCOUNT - A list, generally prepared by the vendor, detailing the transactions between vendor and purchaser for a stated period of time, usually a month, and concluding with the open or unpaid balance.

STOCK - A supply of goods maintained on hand in a supply system to meet anticipated demands.

STOCK CONTROL - Control of the level of stock by control over the movement of goods into and out of stores.

STOCK RECORD - A record kept of items of materials in stock, usually located at a central point and showing stock level position.

STORAGE - The holding of goods in a designated place for safekeeping; a space or a place for the safekeeping of goods.

SUBCONTRACTOR - A party contracting with a prime contractor to perform all or any part of the latter's contract.

SUPPLEMENTAL AGREEMENT - Any contract modification which is accomplished by the mutual action of the parties.

SUPPLIER - A firm that regularly furnishes needed items to a business or government; a vendor.

SUPPLIES - Items which are consumed or expended in the course of being used.

SURPLUS PROPERTY - Inventory not required by one using agency or all using agencies at the present time or in the foreseeable future.

TABULATION OF BIDS - The recording of bids and bidding data that were submitted in response to a specific invitation for the purposes of comparison, analysis, and record keeping.

TERM CONTRACTING - A technique in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity with the possibility of additional requirements beyond the minimum, all at a predetermined unit price. See Blanket order; Open-end contract; Price agreement; Requirements contract.

TERMS AND CONDITIONS - A phrase generally applied to the rules under which all bids must be submitted and the terms that are included in most purchase contracts which are often published by purchasing authorities for the information of all potential bidders.

TERMS OF PAYMENT - All purchase transactions require a payment for the goods or services received and, excepting an unusual exchange or barter agreement payment is made in negotiable funds in accordance with the terms agreed between the buyer and seller. There are three basic payment terms: cash, open account, and secured account.
TESTING - A phase of inspection involving the determination by technical means of the physical and chemical properties of items, or compounds thereof, requiring not so much the element of personal judgment as the application of recognized and established scientific principles and procedures.

TITLE - The means whereby a person's ownership of property is established.

TOKEN BID - A perfunctory offer submitted by a bidder with no serious intent of being the lowest bid; usually submitted when the bidder wishes to maintain eligibility for the bidders list or as a collusive device.

TOTAL SUPPLY - A concept of purchasing, the objective of which is to plan in advance and provide for the broadest scope of purchasing and purchasing related activities as possible in order to minimize costs, increase managerial effectiveness, and improve operational efficiency. Total supply is not only concerned with ordering but also with requirements planning, logistics, and general procurement management.

TRACER - (1) A request or an answer to a previous communication or for information about the status of a subject. (2) A request made to a carrier to trace a shipment for expediting purposes or to establish date of delivery.

TRADE ACCEPTANCE - A non-interest-bearing bill of exchange or draft covering the sale of goods, drawn by the seller and accepted by the buyer. Its purpose is to put into negotiable form an open account having a short maturity. To be eligible for discount it must contain the statement that the acceptor’s obligation arises out of the purchase of goods from the drawer and it may be accompanied by a record of the purchase.

TRADE DISCOUNT - A deduction from an established price for items or services, often varying in percentage with volume of transactions, made by the seller to those engaged in certain businesses and allowed irrespective of the time when payment is made. See Discount.

TRADE NAME - See, Brand name.

TRADE SECRET - Any aspect of a business or its operations which is known only to the manufacturer. See, Proprietary information.

TRADE MAKE - Generally, any sign, symbol, mark, word, or arrangement of words in the form of a label adopted and used by a manufacturer or distributor to designate his particular goods and which no other person has the legal right to use.

TRADE-OFF ANALYSIS - The process of determining the “best” course of action by weighing the advantages and disadvantages associated with available alternatives. The selector course will usually involve a compromise with some resources (e.g.; time) trade-off for another (e.g.; money).

TRANS - Tax Revenue Anticipation Notes.
TRAVELING PURCHASE REQUISITION - A purchase order intended for repetitive use. Upon preparation of a purchase order for the goods requisitioned, the form returns to the requisitioner, who uses it to reorder when the need arises.

ULTIMATE CONSUMER - The buyer who is the last user of a good or service.

ULTRA VIRES ACTIONS - An action which is beyond the power of purpose of a corporation, city, county, or other body, but not an action which is merely performed in an unauthorized manner or without authority.

UNIT PRICE - The price of a selected unit of a good or service (e.g.; price per ton, labor hour, foot).

UNIT PRICE EXTERS - The calculation of the total price of goods by multiplying the price per unit by “the number of units purchased”.

UNRESPONSIVE BID - See Non-responsive bid.

UNSUCCESSFUL BIDDER - An offeror whose bid is not accepted for reasons of price, quality, failure to comply with specifications, etc.

USE TAX – A tax levied on the user of goods. If goods are procured outside the jurisdiction of the taxing authority, and if a sales tax would have been applicable had the goods been purchased within such jurisdictions, a use tax is imposed on the purchaser of the goods.

USING AGENCY - A unit of government that requisitions items through central purchasing.

VALUE-INTRINSIC WORTH - The amount of money for which goods or services can be exchanged. See, Uniform commercial code.

VALUE-ANALYSIS - An organized effort directed at analyzing the function of systems, products, specifications, and standards, and practices and procedures for the purpose of satisfying the required functions at the lowest total cost of ownership.

VENDEE - A term usually applied to the purchaser of real property. “Buyer” is generally applied to the purchaser of personal property.

VENDOR - A seller of goods or services.

VENDOR FAILURE - See, Default.

VENDOR FILE - The accumulated record maintained by the central purchasing authority of information relevant to his business relationship with the governments including application for inclusion on the bidders list, record of performance under contracts, correspondence, and the results of special-purpose analyses.

VENDOR’S LIEN - See Seller’s lien.
VISUAL INSPECTION - Usually manual, inspection performed without the aid of test instruments.

VOID - Without legal effect; unenforceable.

VOLUME PURCHASING - See, Bulk purchasing.

VOUCHER - A written certification, usually testifying that services have been performed or goods purchased, and authorizing payment to be made to the vendor.

WAIVER OF BID(S) - A process usually statutory, whereby a government purchasing office may procure items without formal bidding procedures because of uniqueness of circumstances related to that procurement action.

WAIVER OF MISTAKE OR INFORMALITY - The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.

WARRANTY - An undertaking either express or implied, that a certain fact regarding the subject matter of a contract is as it is declared or promised to be. Not to be confused with “guarantee,” which entails contractual responsibility for the substandard performance or nonperformance of another party.

WHOLESALER - A purchaser who buys goods for resale to a retailer or industrial user.

WITHOUT – A term incorporated in a quotation which frees the vendor from the obligation of accepting an order at the quoted price for fear of price change in the interval between the giving of the quotation and the order being placed.
DEFINITION OF A CONTRACT

A contract is an agreement between at least two parties to either do something or refrain from doing something. To form a contract, three things must happen: (1) one party must make an offer; (2) the other party must accept the offer; and (3) consideration must support the accepted bargain. If any of these are missing, the “agreement” will not be a contract and it will not be enforceable in court.

What is an offer?

It may seem obvious, but some statements that appear to be offers, actually are not.

An offer must represent a genuine intent to contract. Negotiations or inquiries about the possible terms of a contract are not offers. For example, if you contact a seller to determine the price of a good, this is not an offer, but a request for additional information. In this scenario you, the potential buyer, do not have intent to contract.

An offer must be sufficiently definite so that if it is accepted, the terms of the contract will not be so vague or ambiguous that a court will not be able to figure out what the parties agreed to.

Finally, the offer must be communicated to the other party.

What constitutes acceptance?

Acceptance can only occur when both parties have a meeting of the minds, meaning both parties are in agreement regarding the terms of the contract. The acceptance must be communicated to and received by the offeror. The person making the offer is free to prescribe that acceptance occur in a particular manner, such as by phone or email.

To create a contract, an offer must be accepted (1) before it expires, or (2) within a reasonable time if no expiration date is mentioned, or (3) before it is revoked. Thus, when you are making an offer, it’s a good idea to include an expiration date. If you intend to accept an offer, it’s a good idea to do it promptly.

Finally, an acceptance can’t change the terms of the original offer. If a response to an offer contains different or additional terms, it does not create a contract. Rather it is a counteroffer, which then must be accepted by the person originally making the offer to create a contract.

Acceptance by performance

Most of the time, offers are accepted by a written or oral promise. In some cases, it’s possible to accept an offer and create a binding contract by performing the requested action, rather than merely promising to. For example, you offer to pay a website designer an extra $100 if she has your site up by tomorrow. The next day, the site is up. You are obligated to pay her.
**What is consideration?**

Finally, a contract must contain consideration. Consideration is a bargained for exchange, with one party giving something of value up to receive something else of value in return.

Consideration is the cause, motivation, or price that induces a party to enter into the contract. Put another way, it is the exchange of benefits and detriments between the parties. For example, if you enter into an agreement with an architect to draw up plans for remodeling your restaurant, the consideration you provide is the money you pay the architect and the consideration she provides is the plans.

DEFINITION OF AN INDEPENDENT CONTRACTOR

The following guidelines are intended to assist you in determining whether or not it is permissible to hire a person as a "consultant" or "independent contractor," and knowing the legal restraints on administrators in directing the work of such contractors.

California Labor Code, Section 3353: "Independent Contractor means any person who renders service for a specified recompense, for a specified result, under the control of a principal as to the result of a work only, and not as to the means by which such result is accomplished."

An independent contractor works independently, normally performing a service with a specific scope of work for a set fee, and within a defined period of time. An independent contractor is not an employee, and no such arrangement may be used to circumvent employment procedures or employee contracts. Payments to a District employee who performs any kind of additional services for the District must be processed through the payroll system (i.e., an independent services contract is not permissible with a District employee).

- Mistakenly classifying a person as an independent contractor can result in fines and penalties. To be an independent contractor, substantial conformance with the following conditions must exist:
  - The contractor controls the way in which work is performed.
  - The contractor sets his or her own hours.
  - The contractor is not restricted from taking jobs from other businesses at the same time that they are doing work for the District.
  - No district employees have duties similar to the independent contractor.
  - The District does not provide assistants to the contractor.
  - The duration of employment is for a specific job, not for a specified period of time.
  - The District does not furnish tools, training, or equipment to the contractor. Contractors should be able to perform their services without the District's facilities (e.g., equipment, office furniture, machinery).
  - The contractor's investment in his or her trade must be real, essential, and adequate.
  - The contractor has employer identification numbers with the Internal Revenue Service and the California Employment Development Department for reporting employer payroll taxes and employee wages.
  - The individual is not presently employed by the District to do the same type of work.
  - Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
  - Contractors are hired for the final result, and therefore should not be asked for progress or interim reports.
  - Contractors are generally responsible for their incidental expenses.
  - Contractors should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible:
    - If the contractor hires and pays assistants
    - If the contractor has his own office, equipment, materials, or facilities
    - If the contractor has continuing and reoccurring liabilities
    - If the contractor has agreed to perform specific jobs for prices agreed upon in advance
    - If the contractor's services affect his own business reputation

- Contractors can't be fired so long as they produce a result that meets the contract specifications.
- Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

IRS Publication SWR 40, Public Schools and Employment Taxes, lists workers that have already been determined by IRS to be employees. These are individuals performing the duties of:

<table>
<thead>
<tr>
<th>Administrators</th>
<th>Examination Monitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athletic Coaches</td>
<td>Individuals &quot;filling in&quot;</td>
</tr>
<tr>
<td>Cafeteria Workers</td>
<td>Librarians</td>
</tr>
<tr>
<td>Clerical Staff</td>
<td>Nurses</td>
</tr>
<tr>
<td>Counselors</td>
<td>Proctors</td>
</tr>
</tbody>
</table>

| Specialty Teachers (art, poetry, etc.) |
| Substitute |
| Teachers/Instructors |
| Tutor |
District Procedures

Independent Contractors

References: Government Code Section 53060, Education Code Section 88003.1

The District may enter into personal services contracts to achieve cost savings when each of the following conditions is met:

- It can be clearly demonstrated that the proposed contract will result in actual overall cost savings to the District;
- The contractor's wages are at the industry's level and do not undercut District pay rates;
- The contract does not cause the displacement of district employees;
- The savings are large enough to ensure that employees will not be eliminated by the private sector and District cost fluctuations that could normally be expected during the contracting period;
- The amount of savings clearly justifies the size and duration of the contracting agreement;
- The contract is awarded through a publicized, competitive bidding process;
- The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards;
- The potential for future economic risk to the District from potential contractor rate increases is minimal:
  - The contract is with a firm; and
  - The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the District.

Personal service contracts are also permissible when anyone of the following conditions is met:

- The contract is for new functions mandated or authorized by the Legislature to be performed by independent contractors;
- The services are not available within the District or cannot be satisfactorily performed by district employees;
- The services are incidental to a purchase or lease contract;
- The policy, administrative, or legal goals and purposes of the District cannot be accomplished through the regular or ordinary hiring process;
- The work meets the criteria for emergency appointment;
- Equipment, materials, facilities, or support services could not feasibly be provided by the District; or the services are of an urgent, temporary, or occasional nature.

Professional Experts

Contracts for the services of persons who qualify as professional experts may be let without competitive bidding. Professional experts are persons specially qualified to provide services and advise in financial, economic, accounting, engineering, legal or administrative matters. They must be specially trained, experienced and competent to perform the services required. Compensation for special services and advice from professional experts may be paid from available funds in the amounts deemed proper for the services rendered.

Independent Contractors

To be an independent contractor, substantial conformance with the following conditions must exist:

- The contractor controls the way in which work is performed.
• The contractor sets his or her own hours. The contractor is not restricted from taking jobs from other businesses at the same time that they are doing work for the District.
• No district employees have duties similar to the independent contractor.
• The District does not provide assistants to the contractor.
• The duration of employment is for a specific job, not for a specified period of time.
• The District does not furnish tools, training, or equipment to the contractor. Contractors should be able to perform their services without the District’s facilities (e.g., equipment, office furniture, machinery).
• The contractor’s investment in his or her trade must be real, essential, and adequate.
• The contractor has employer identification numbers with the Internal Revenue Service and the California Employment Development Department for reporting employer payroll taxes and employee wages.
• The individual is not presently employed by the District to do the same type of work.
• Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
• Contractors are hired for the final result, and therefore should not be asked for progress or interim reports.
• Contractors are generally responsible for their incidental expenses.
• Contractors should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible:
  - If the contractor hires and pays assistants
  - If the contractor has his or her own office, equipment, materials, or facilities
  - If the contractor has continuing and reoccurring liabilities
  - If the contractor has agreed to perform specific jobs for prices agreed upon in advance
  - If the contractor’s services affect his or her business reputation
• Contractors can’t be fired so long as they produce a result that meets the contract specifications.
• Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

CONSULTANTS

Consulting services contracts refer to all services that:

• are of an advisory nature,
• provide a recommended course of action or personal expertise,
• have an end product which is basically a transmittal of information either written or verbal, and,
• are obtained by awarding a procurement-type contract, a grant, or any other payment of funds for services of the above type.

The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

FORMS

All vendors shall provide a completed "IRS W-9" form to the District before commencing services. All independent contractors shall provide the District with a completed "EDD Report of Independent Contractor(s)" form. A completed District "Business Enterprise Certification" form is also strongly recommended, providing information on racial/ethnic/sex ownership of the vendor.
Use the following checklist to define the role of independent contractor vs. employee. The person must pass this test in order to comply with IRS regulations governing independent contracts. (Attach to Agreement.)

### PART I

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has this category of worker already been classified an &quot;employee&quot; by the IRS?</td>
<td></td>
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<tr>
<td>administrators</td>
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<tr>
<td>individuals &quot;filling in&quot;</td>
<td></td>
<td></td>
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<tr>
<td>psychologists</td>
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<td>ASB workers</td>
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<td>on an individual basis</td>
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<td>school bus drivers</td>
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<td>athletic coaches</td>
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<tr>
<td>intern psychologists</td>
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<tr>
<td>specialty teachers</td>
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<tr>
<td>cafeteria workers</td>
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<tr>
<td>librarians</td>
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<tr>
<td>substitutes</td>
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<tr>
<td>clerical staff</td>
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<tr>
<td>nurses</td>
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<tr>
<td>teachers/instructors</td>
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<tr>
<td>counselors</td>
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<tr>
<td>proctors</td>
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<tr>
<td>tutors</td>
<td></td>
<td></td>
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<tr>
<td>examination monitors</td>
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<tr>
<td>2. Is this individual working as an employee prescribed by the Education Code?</td>
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<tr>
<td>Education Code Sections 45100-45451 define what constitutes the classified service.</td>
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<td></td>
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<tr>
<td>Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.</td>
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<tr>
<td>3. Is the individual already an employee of the district in another capacity?</td>
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<tr>
<td>4. Has the individual performed substantially the same services for the district as an employee in the past?</td>
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<tr>
<td>5. Are there currently employees of the district doing substantially the same services as will be required of this individual?</td>
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<tr>
<td>6. Does the district have the legal right to control the method of performance by this individual?</td>
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<tr>
<td>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.</td>
<td></td>
<td></td>
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<tr>
<td>7. Does the District require the individual to submit reports on the details of their work or work at a particular site?</td>
<td></td>
<td></td>
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<tr>
<td>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.</td>
<td></td>
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</tr>
</tbody>
</table>

**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.

| Question                                                                 |     |    |
| 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? |     |    |
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.

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Does the individual operate an independent trade or business that is available to the general public?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.</td>
<td></td>
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</tbody>
</table>

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…

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>13. Does the individual provide all materials and support services necessary for the performance of this service?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>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?</td>
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<td></td>
</tr>
<tr>
<td>15. Does the individual bear the cost of any travel and business expenses incurred to perform this service?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 ________________________
CONTRACTING OUT – Classified Services: EDUCATION CODE 45103.1

(a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the school district, provided that:

   (A) In comparing costs, there shall be included the school district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

   (B) In comparing costs, there shall not be included the school district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the school district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

   (C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing school district costs that would be directly associated with the contracted function. These continuing school district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut school district pay rates.

(3) The contract does not cause the displacement of school district employees. The term “displacement” includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the school district from potential contractor rate increases is minimal.
The contract is with a firm. A “firm” means a corporation, limited liability company, partnership, nonprofit organization, or sole proprietorship.

The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the school district.

Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

1. The contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

2. The services contracted are not available within the district, cannot be performed satisfactorily by school district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.

3. The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

4. The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

5. The nature of the work is such that the criteria for emergency appointments apply. “Emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

6. The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.

7. The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

This section shall apply to all school districts, including districts that have adopted the merit system.

This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.
Vista Unified School District

PERFORMANCE AGREEMENT FOR CONSULTANTS

THIS AGREEMENT made this day of , 20__, in the County of San Diego, California, by and between the Vista Unified School District (hereinafter "DISTRICT") and (hereinafter "CONSULTANT").

DISTRICT AND CONSULTANT hereby agree to the following:

1. TERM. The term of this Agreement shall be for the period through inclusive:

2. SERVICES. The CONSULTANT shall furnish the following services (state specifically the materials and/or equipment to be provided by CONSULTANT) and in consideration of the services to be rendered by CONSULTANT and subject to the payment provisions expressed herein, DISTRICT agrees to pay CONSULTANT upon submission of a properly documented demand for payment which shall be submitted not less than 30 days from the end of the month in which the services were rendered, and upon approval of such demand by the DISTRICT.

3. INSURANCE. The CONSULTANT will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision in paragraph 6 of this agreement. The CONSULTANT shall be responsible for all costs/expenses incident to the performance of services rendered to the DISTRICT.

4. COMPENSATION. In consideration of the services to be rendered by CONSULTANT and subject to the payment provisions expressed herein, DISTRICT agrees to pay CONSULTANT compensation for any expenses incurred by the CONSULTANT except as provided by the agreement.

5. ASSIGNMENT. This agreement is not assignable by the CONSULTANT in whole or in part without the express written consent of the DISTRICT.

6. GOVERNING LAW. The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California. The requirement of this provision may be waived by the DISTRICT; however, any waiver shall not affect the CONSULTANT’s liability to the DISTRICT under paragraph 6. The CONSULTANT shall provide proof of insurance to the DISTRICT.

7. TAX REPORTING/PAYMENT RESPONSIBILITIES. DISTRICT shall provide an annual statement (IRS form 1099) of compensation paid if said amount for services is greater than $600. CONSULTANT is responsible for payment of any federal and/or state tax amounts due. CONSULTANT shall provide workers’ compensation insurance or self-insure his/her services. The CONSULTANT agrees to provide proof of required insurance upon request by the DISTRICT.

8. STATUS OF CONSULTANT. This agreement is by and between two independent parties and is not intended to and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. In executing this agreement, the CONSULTANT certifies that no one who has or who will have any financial interest under this agreement is an officer or employee of the DISTRICT. It is expressly understood that CONSULTANT is acting as an independent contractor and not as an officer, agent, or employee of the DISTRICT.

9. TERMINATION. This contract may be terminated at the sole discretion of the DISTRICT, upon five-day advance written notice thereof to the CONSULTANT. The CONTRACT shall be paid the reasonable value of the services rendered up to the date of such termination, as determined by the DISTRICT, and CONSULTANT hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein.

10. GOVERNING LAW. The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California.

11. GOVERNING LAW. The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California.

12. INDEMNITY. The CONSULTANT agrees and shall defend, indemnify, save and hold harmless the DISTRICT, its agents, officers, and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the CONSULTANT, its agents, officers, employees, or subcontractors hereunder, and any other person, firm, or corporation furnishing or supplying work, materials, services, supplies, or in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this agreement.

13. INDEMNITY. The CONSULTANT agrees and shall defend, indemnify, save and hold harmless the DISTRICT, its agents, officers, and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the CONSULTANT, its agents, officers, employees, or subcontractors hereunder, and any other person, firm, or corporation furnishing or supplying work, materials, services, supplies, or in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this agreement.

14. TERMINATION. This contract may be terminated at the sole discretion of the DISTRICT, upon five-day advance written notice thereof to the CONSULTANT. The CONTRACT shall be paid the reasonable value of the services rendered up to the date of such termination, as determined by the DISTRICT, and CONSULTANT hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein.

15. COMPLETE AGREEMENT. This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.

INWITNESS WHEREOF, the DISTRICT and CONSULTANT have executed this Agreement effective as of the date first written above.

INSTRUCTIONS FOR PROCESSING:
A copy of the Purchase Requisition and the Performance Agreement for Consultants form (3000.5) must be forwarded to a cabinet member for approval prior to performance of services. All agreements once signed by cabinet member will be forwarded to Human Resources for approval.

Name:
Contact Person:
Address:
Phone: Fax:
Social Security # or Tax ID:

*CONSULTANT/COMPANY:
Check will be made payable to the name of the person listed on the W-9 form.

*May not be a VUSD current or retired employee
This agreement is hereby entered into between ______________________________ School District, hereinafter referred to as "District," and,

Contractor Name

Mailing Address

City State Zip Code Taxpayer ID No.

hereinafter referred to as "Contractor."

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District is in need of such special services and advice, and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. (For additional explanation of services, attach Exhibit A which then will be incorporated here in full by this reference.)

2. **Term.** Contractor shall commence providing services under this Agreement on ______________, and will diligently perform as required and complete performance by ______________.

3. **Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee **not to exceed** __________________________ ($ ______________). District shall pay Contractor according to the Following terms and conditions: **Net 30**

   (For additional explanation of reimbursement terms, attach Exhibit B which then will be incorporated here in full by this reference.)

4. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, except as follows:

   (For additional explanation of expense reimbursement terms, attach Exhibit C which then will be incorporated here in full by this reference.)
5. **Precedence of Agreement Over Exhibits.** Should there be any ambiguity or inconsistency between any exhibits to this Agreement and the terms of this Agreement, the terms of this Agreement take precedence.

6. **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities and all other means whatsoever, except as herein otherwise expressly specified to be furnished by District, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.

7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Agreement.

8. **Taxes.** Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state, or local tax authority. No part of Contractor's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

9. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

   Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with general and currently accepted principles and practices of his/her profession.

10. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other sources, except that submitted to Contractor by District as a basis for such services.

11. **Confidentiality and Use of Information.**

   a.) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District’s research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

   b.) Contractor shall advise District of any and all materials used, or recommended for use by Contractor to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise District and, as a result of the use of any programs or materials developed by Contractor under this Agreement, District should be
found in violation of any copyright restrictions or requirements, or District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

12. **Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District’s place of business specified above, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

13. **Works for Hire/Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall be works for hire and shall become the sole property and cannot be used without District’s express written permission. District shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

14. **Termination.**

**Termination for Convenience:** At any time and without need for cause, the District may terminate this Agreement by delivering written notice of termination to the Contractor. The Contractor shall be deemed to have received written notice either upon actual receipt or five days after the District mails the notice to the address of the Contractor specified in Section 23, whichever occurs first. The termination shall take effect immediately upon receipt of the written notice, unless the notice specifies a later date as the effective date of the termination. As of the effective date of the termination, the Contractor shall cease all work pursuant to this Agreement. The District and the Contractor expressly agree that, in the event of termination for convenience, the District will be required to compensate the Contractor only for services satisfactorily rendered prior to the effective date of termination.

**Termination for Cause:** At any time it believes it has sufficient cause the District may deliver written notice to the Contractor of the District’s intent to terminate this Agreement for cause. The Contractor shall be deemed to have received the written notice either upon actual receipt or five days after the District mails the notice to the address of the Contractor specified in Section 23, whichever occurs first. The written notice shall set forth in reasonable detail the cause(s) underlying the District’s intent to terminate this Agreement. Sufficient cause for termination shall include: (a) any material breach of this Agreement by the Contractor, including any failure by Contractor to reasonably perform its obligations pursuant to this Agreement; (b) any act by Contractor exposing the District to liability for, or resulting in District liability for, personal injury or property damage; (c) any act by Contractor exposing the District to liability for, or resulting in District liability for, fraudulent or other wrongful acts; and (d) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor’s insolvency. This Agreement shall terminate fifteen days after receipt by the Contractor of the written notice, unless Contractor has corrected or eliminated the matters forming the cause(s) for termination and provided evidence thereof satisfactory to the District, or Contractor has made arrangements for the correction or elimination of such matters satisfactory to the District. In the event of such termination for cause, all work and services of the Contractor provided prior to the termination shall be the property of the District, and the District may complete the services required under this Agreement by any other means the District determines reasonable. The Contractor shall be liable for all damages incurred by the District as a result of the Contractor’s breach of its obligations pursuant to this Agreement, acts exposing the District to liability, and/or acts resulting in District liability. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
15. **Indemnification.** Contractor shall indemnify, defend, and hold-harmless the District and its officers, agents and employees from and against every claim, demand, action, damage, loss, cost, expense and other liability of any nature whatsoever arising, in connection with or as a consequence of the performance of this Agreement, from: (i) the injury (including death) of any person and/or the damage, loss or theft of any property attributable in whole or in part to acts or omissions of the Contractor or any contractor, consultant, employee or agent of the Contractor (each a “Contractor Agent”); (ii) the failure of the Contractor or any Contractor Agent to reasonably perform the obligations of the Contractor pursuant to this Agreement; and (iii) the furnishing or use by the Contractor or any Contractor Agent of any copyrighted or un-copyrighted material or patented or un-patented invention or item. Notwithstanding the foregoing, the Contractor shall not be liable pursuant to this Section 12 to the extent liability results from the sole negligence or willful misconduct of the District or its officers, employees or agents.

16. **Insurance.** Contractor shall obtain and maintain during the term of this Agreement a professional liability policy providing coverage in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate. Prior to commencement of work on this Agreement, the Contractor shall provide to the District a certificate of insurance evidencing the required insurance coverage.

17. **Worker’s Compensation Insurance.** The Contractor represents and warrants to the District that it does not have any employees and is not required to maintain Worker’s Compensation insurance in accordance with California law.

18. **Fingerprinting Requirements.** The District anticipates that the Contractor will not have contact with any students of the District. However, if the Contractor determines that a visit to a school campus is necessary, the Contractor shall arrange with the District to be accompanied by a District employee at all times or comply with Education Code 45125.1.

19. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

20. **Compliance with Applicable Laws.** The service completed herein must meet the approval of the District and shall be subject to the District’s general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor’s business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

21. **Permits/Licenses.** Contractor and all Contractor’s employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

22. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

23. **Entire Agreement/Amendment.** This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, any may be amended only by a written amendment executed by both parties to the Agreement.
24. **Nondiscrimination in Employment.** Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

25. **Non-waiver.** The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party or such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

26. **Administrator of Agreement.** This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

   For District: __________________________

   For Contractor: __________________________

27. **Notice.** All notices or demands to be given under this Agreement by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally serviced or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are set forth above.

28. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

29. **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in _____________ County, California.

30. **Warranty of Authority.** Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

This Agreement is entered into this ___ day of ____________, ___.

SCHOOL DISTRICT

Signature of Authorized Agent

Typed or Printed Name

Title

Board Approval Date: ________________

CONTRACTOR

Signature of Authorized Agent

Typed Name

Social Security or Taxpayer I.D. No.

(Area Code) Telephone Number
AGREEMENT FOR
PROFESSIONAL SERVICES

THIS AGREEMENT, is entered into this ___ day of Month, 20___, by and between the SCHOOL DISTRICT, herein called "DISTRICT," and__________________________, herein called "CONSULTANT."

WHEREAS, the DISTRICT has a need for Services needed with respect to the work described herein; and

WHEREAS, CONSULTANT warrants that it is fully licensed and qualified to perform such Brief Description of Project, and specially trained, experienced, an expert and competent to perform such services;

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. Scope of Work. CONSULTANT shall commence providing any particular services only upon receipt from the District of a Project Authorization Letter for those services in accordance with this Agreement. In the absence of an applicable Project Authorization Letter, CONSULTANT shall not undertake any work or services ostensibly pursuant to this Agreement and the District shall have no obligation to compensate the CONSULTANT for any such work or services. Project Authorization Letters shall be deemed and construed as authorizing the work to be performed pursuant to this Agreement and not as modifying or amending this Agreement. In the event of any conflict between the provisions of this Agreement and any Project Authorization Letter, the Agreement shall control with respect to terms and conditions for provision of the services and the Project Authorization Letter shall control with respect to the scope, type and manner of services, compensation for services, and similar matters set forth in the Project Authorization Letter.

(Scope of work)

All work shall be performed to the degree of skill and care ordinarily exercised under similar circumstances by reputable members of Consultants profession practicing in the same or similar locality at the time of performance. CONSULTANT shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in a Project Authorization Letter. Nothing in this paragraph shall require District to use CONSULTANT for any services and District may use other consultants for any such work.

Consultant shall:

- Contract or employ at Consultant’s expense, Sub Consultants or personnel to the extent deemed necessary for the work authorized by a Project Authorization Letter. District reserves the right to reject the use of any Sub Consultant.

- Consult, as necessary, with normal and customary employees, agencies, and/or representatives of the District regarding the work of each Project Authorization Letter.

- Attend meetings with the District, other professionals employed by the District and local and regional agencies, as needed, and directed by the District to perform the work.

- Cooperate with other professionals employed by the District for other work related to the Project Authorization Letter.
• Abide by all regulations imposed by funding sources, such as auditing requirements and payoff affidavits.

• Be responsible for the professional quality, technical accuracy and the coordination of Consultant’s entire work product and provide a professional level of review of all deliverables to assure quality and professional accuracy of all documents furnished by Consultant. Consultant shall, without additional compensation, correct or revise any errors in its documents or other services.

Each Project Authorization letter will identify the campus and project name(s), the project specific scope of services and the required deliverables.

Consultant shall submit an estimated cost breakdown based upon the project specific scope which shall include all necessary hours to perform the project specific scope of services, all estimated hours for labor and the corresponding hourly rate, along with any other estimated costs for services including, but not limited to, any Sub Consultants, research, travel time or other expenses for which Consultant seeks reimbursement.

The District will review Consultant’s cost estimate and negotiate, as needed. A Project Authorization letter may issue authorizing the start of work if the estimated cost is reasonable.

The District may, at its discretion, coming two (2) or more projects to be handled as single Project assignment. If a Project assignment includes multiple projects, Consultant shall provide a separate invoice for each individual Project for which services are provided under a single Project Authorization Letter.

Consultant may be assigned various projects and tasks which have different funding sources.

Each Project Authorization Letter shall incorporate Consultant’s budget for the assigned task. On a regular basis, but not less than weekly, the Consultant shall report to the District’s Project Manager on the status of the assigned work including, but not limited to, the percentage of the work performed under the Project Authorization Letter, the percentage of the budget consumed, to date, (whether or not billed or paid) and the percentage of the budget remaining, for each line item set out in the task order, and the schedule of tasks contemplated for the following week. Notification by e-mail will be acceptable, provided that all of the required information is included. No invoices will be paid if the required reports are not timely filed. Filing of the reports does otherwise require the District to pay for the services described in the reports.

2. **Time for Completion of Work.** No work shall be commenced prior to CONSULTANT’S receipt of the DISTRICT’S Project Authorization Letter. All work shall be completed no later than the date agreed upon by the parties for each matter or project, provided, however, that extensions of time may be granted in writing by the District, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the District to be good and sufficient cause for such extensions.

3. **Term.** The term of this Agreement shall be from ________ through __________. This Agreement may be renewed, at the option of the District, for up to four (4) additional one (1) year terms.
4. Payment for Services.
   a. **Compensation - Fees.** CONSULTANT’S compensation will be primarily based upon
      fixed fees negotiated for a specific project including, but not limited to, cost of travel and
      all incidentals necessary to complete the project scope of work. The District may, at its
      discretion, negotiate either hourly rates or fixed fee rates for the described services.
      Rates may be based on actual services performed at the rates set forth for each task in
      the Exhibit A or in an amount otherwise agreed to by the DISTRICT in a Project
      Authorization Letter. Consultant’s compensation will be $190.00 per hour. Consultant’s
      associate attorney will be compensated at $160.00 per hour.
   
   b. **Reimbursables - Costs.** If authorized in writing, in advance, by the District in a Project
      Authorization Letter, the following costs and expenses may be invoiced by Consultant
      and reimbursed by the District:
      
      i) Outside copying charges/reprographics - at cost + 5%
      
      ii) Subconsultants - at cost + 10%
      
      iii) Mileage - at the I.R.S. rate at the time of travel or $25 per day, whichever is less.
      Mileage will only be reimbursed for personnel based out of town, whose assignment
      to the job location has been previously approved, in writing, by the District, and then
      only if: a) the trip from the out-of-town office to the job location is more than 50 miles
      one way and b) then only with respect to those dates that they are on the job site.
      
      No costs or expenses will be reimbursed or due unless specifically allowed in a Project
      Authorization Letter.
      
      Any request for a Project Authorization Letter must include a itemization of any
      anticipated reimbursable costs under this paragraph and specify a not-to-exceed
      estimate for such costs.
   
   c. **Reports and Billing Invoices.** CONSULTANT shall submit to the DISTRICT, on a task
      completion basis, a detailed statement of services performed and work accomplished
      during that preceding period, including the number of hours of work performed and the
      personnel involved. For the purpose of timely processing of invoices, the
      CONSULTANT’S invoices are not regarded as received until the applicable deliverable
      is submitted. Any anticipated problems in performing any future work shall be noted in the
      billing invoice transmittal letter. The CONSULTANT shall also promptly notify the District
      of any perceived need for a change in the scope of work or services.
   
5. Accounting Records.
   a. CONSULTANT shall maintain accounting records in accordance with generally accepted
      accounting principles. The CONSULTANT shall obtain the services of a qualified
      bookkeeper or accountant to ensure that accounting records meet this requirement. The
      CONSULTANT shall maintain acceptable books of accounts which include, but are not
      limited to, a general ledger, cash receipts journal, cash disbursements journal, general
      journal and payroll journal.
      
   b. CONSULTANT shall record costs in a cost accounting system which clearly identifies
      the source of all costs. Agreement costs shall not be co-mingled with other project
      costs, but shall be directly traceable to contract billings to the DISTRICT. The use of
      worksheets to produce billings shall be kept to a minimum. If worksheets are used to
produce billings, all entries should be documented and clearly traceable to the CONSULTANT’S cost accounting records.

c. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. CONSULTANT shall safeguard the accounting records and supporting documentation.

d. CONSULTANT shall make accounting records and supporting documentation available on demand to the DISTRICT and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the DISTRICT. The DISTRICT may require having the CONSULTANT’S accounting records audited, at CONSULTANT’S expense, by an accountant licensed by the State of California.

6. **Changes in Scope of Service.** No change in the character or extent of the work to be performed by CONSULTANT shall be made except through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in work, adjustment of time, and adjustment of the sum to be paid by DISTRICT to CONSULTANT, if any. Any amendment must be approved by the Governing Board of the DISTRICT.

7. **Non-Assignment of Agreement.** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or sublet any interest herein without the prior written consent of DISTRICT and any such assignment, transfer, delegation, or sublease without the DISTRICT’S prior written consent shall be considered null and void.

8. **Insurance.** CONSULTANT shall procure the following required insurance coverages at its sole cost and expense and maintain in full force and effect for the period covered by this Agreement such insurance. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A- VII and are admitted insurance companies in the State of California, or (2) insurers of equivalent documented quality.

   a. Professional Liability Insurance: CONSULTANT shall maintain in full force and effect during the entire term of this Agreement, professional liability "errors and omissions" insurance with limits of liability of not less than $1,000,000.00 per claim and $2,000,000.00 in aggregate to cover all services rendered by CONSULTANT pursuant to this Agreement.

   b. If coverage is on Claims Made basis, CONSULTANT promises to maintain such coverage for four (4) years following completion of construction of project designed hereunder.

   c. Commercial General Liability (CGL): CONSULTANT shall maintain in full force and effect, for the period covered by this Agreement, insurance including the following coverages:

      i) Commercial General Liability covering the following

         (1) Personal Injury and Bodily Injury, including death resulting therefrom.

         (2) Property Damage.

   d. Automobile coverage which shall include owned, non-owned and hired vehicles.

   The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property
damage, and automobile coverage in the amount of $1,000,000.00 single limit, $2,000,000 aggregate.

The following endorsements must be provided in the CGL policy:

1. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The

________________________________________________________

School District, its officers, employees and agents shall be named as additional insured under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the DISTRICT, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this Agreement shall be construed to require CONSULTANT’S insurance to indemnify DISTRICT in contravention of Insurance Code 11580.04.

e. Workers’ Compensation Insurance: In accordance with the provision of

Labor Code Section 3700, CONSULTANT, if CONSULTANT has any employees, is required to be insured against liability for Workers’ Compensation or to undertake self-insurance. CONSULTANT agrees to comply with such provisions before commencing the performance of the work of this Agreement.

f. Employer’s Liability Insurance: CONSULTANT shall maintain Employer’s Liability Insurance in the amount of $1,000,000 per accident for bodily injury or disease.

g. The following requirements apply to all insurance to be provided by CONSULTANT:

i) A certificate of insurance shall be furnished to DISTRICT prior to commencement of work. Upon request by the DISTRICT, CONSULTANT shall provide a certified copy of any insurance policy to the DISTRICT within ten (10) working days.

ii) Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to DISTRICT.

iii) Approval of the insurance shall not relieve or decrease the extent to which the CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT’S services or operations pursuant to this Agreement.

9. Indemnification. Consultant shall indemnify District, and shall hold District harmless, against and from any and all claims, demands, actions and other proceedings, damages, losses, costs, expenses (including, without limitation, reasonable attorneys fees and expenses), and other liabilities of any nature attributable to the injury or death of any person(s) or the damage to any property arising out of or in any way connected with the negligent performance of this Agreement by Consultant or its officers, agents, employees or subConsultants. Consultant shall reimburse District for all damages, expenses and losses
incurred by District as a consequence of any claim, demand, or cause of action that may be
brought against District resulting from, arising out of, or in any way connected with the
performance of this Agreement or of the services by Consultant or its officers, agents,
employees or subConsultants, including disputes between Consultant and any of its
subConsultants. The Consultant shall not be responsible pursuant to this Section to the
extent of any contributing negligence or willful misconduct of the District or its officers,
employees or subConsultants.

10. Insurance and Indemnification as Material Provisions. The parties expressly agree that
the indemnification and insurance clauses in this Agreement are an integral part of the
performance exchanged in this Agreement. The compensation stated in this Agreement
includes compensation for the risks transferred to CONSULTANT by the indemnification and
insurance clauses.

11. CONSULTANT'S Endorsement on Reports, etc. CONSULTANT shall endorse all reports,
maps, plans, documents, materials and other data in accordance with applicable provisions
of the laws of the State of California.

12. Documents, Information and Materials Ownership. All documents, information and
materials of any and every type including intellectual property, prepared or produced by the
CONSULTANT pursuant to this Agreement shall be the property of the DISTRICT. Such
documents shall include but not be limited to data, drawings, specifications, reports,
estimates, summaries, and such other information and materials as may have been
accumulated by the CONSULTANT in performing work under this Agreement, whether
completed or in process. The CONSULTANT shall assume no responsibility for the
unintended use by others of any such documents, information, or materials on project(s)
which are not related to the scope of services described under this Agreement.

13. Termination of Agreement Without Cause. DISTRICT may terminate this Agreement at
any time by giving the CONSULTANT twenty (20) days written notice of such termination.
Termination shall have no effect upon the rights and obligations of the parties arising out of
any transaction occurring prior to the effective date of such termination. Other than
payments for services satisfactorily rendered prior to the effective date of said termination,
CONSULTANT shall be entitled to no further compensation or payment of any type from the
DISTRICT.

14. Termination of Agreement for Cause. If CONSULTANT fails to perform CONSULTANT'S
duties to the satisfaction of the DISTRICT, or if CONSULTANT fails to fulfill in a timely and
professional manner CONSULTANT'S obligations under this Agreement or if CONSULTANT
violates any of the terms or provisions of this Agreement, or if CONSULTANT,
CONSULTANT'S agents or employees fail to exercise good behavior, either during or
outside of working hours, that is of such a nature as to bring discredit upon the DISTRICT,
then DISTRICT shall have the right to terminate this Agreement effective immediately upon
the DISTRICT giving written notice thereof to the CONSULTANT. Termination shall have no
effect upon the rights and obligations of the parties arising out of any transaction occurring
prior to the effective date of such termination. CONSULTANT shall be paid for all work
satisfactorily completed prior to the effective date of such termination. If DISTRICT’S
termination of the Agreement for cause is defective for any reason, including but not limited
to DISTRICT’S reliance on erroneous facts concerning CONSULTANT’S performance, or
any defect in notice thereof, this Agreement shall automatically terminate without cause on
the twentieth day following the DISTRICT’S written notice of termination for cause to the
CONSULTANT, and the DISTRICT’S maximum liability shall not exceed the amount payable
to CONSULTANT under paragraph 12 above.
15. **Compliance with Laws.** CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement. Any required statutory provision is deemed incorporated by this reference.

16. **Covenant Against Contingent Fees.** CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. **Disputes & Claims.**

a. **Notice of Potential Claim.** The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the DISTRICT, or for the happening of any event, thing, occurrence, or other cause, unless CONSULTANT has provided the DISTRICT with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the DISTRICT prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the DISTRICT, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the DISTRICT at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the Director of Public Works.

b. **Processing of Actual Claim.** In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the DISTRICT on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word "claim" as used in said sections shall be construed as referring to any claim relating to this Agreement. The CONSULTANT shall not be entitled to any additional compensation unless CONSULTANT has (1) provided the DISTRICT with a timely written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.

c. **Claim is No Excuse.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the DISTRICT, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

18. **CONSULTANT is an Independent Consultant.** It is expressly understood that in the performance of the services herein provided, CONSULTANT shall be, and is, an independent CONSULTANT, and is not an agent or employee of DISTRICT. CONSULTANT has and shall retain the right to exercise full control over the employment,
direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of the services rendered hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of his employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

19. **Entire Agreement and Modification.** This Agreement constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

20. **Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. **Warranty of CONSULTANT.** CONSULTANT warrants that CONSULTANT and each of the personnel employed or otherwise retained by CONSULTANT for work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

22. **SubConsultants.**
   a. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the DISTRICT.
   b. Any subcontract entered into by CONSULTANT relating to this Agreement shall contain all the provisions contained in this Agreement.
   c. Any substitution of subConsultants must be approved in writing by the DISTRICT in advance of assigning work to a substitute subConsultant.

23. **Applicable Law and Venue.** This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Diego County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

24. **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to DISTRICT at:

   to the DISTRICT at:
   District Contact
   Address

   to the CONSULTANT at:
   Consultant
   Address

25. **Cost Disclosure - Documents and Written Reports.** Pursuant to Government Code section 7550, if the total cost of this Agreement is over $5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts.
relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

26. Findings Confidential. No reports, maps, information, documents, or any other materials given to or prepared by CONSULTANT under this Contract which DISTRICT requests in writing to be kept confidential, shall be made available to any individual or organization by CONSULTANT without the prior written approval of DISTRICT.

27. Quality Control and Quality Assurance. The CONSULTANT shall provide a description of their Quality Control procedure. The process shall be implemented for all facets of work and a QC-QA statement and signature shall be placed on all submittals to the DISTRICT.

28. Fingerprinting Requirements. Consultant agrees to provide the District with written certification that Consultant has complied with the fingerprinting and criminal background investigation requirements of the California Education Code with respect to all Consultant's employees who may have contact with District students in the course of providing said services, and that the California Department of Justice has determined that none of those employees has been convicted of a felony, as defined in Education Code Section 45122.1 through 45125.5.

IN WITNESS THEREOF, DISTRICT and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

________________ SCHOOL DISTRICT          ________________________ CONTRACTOR

______________________________  ________________________________
Signature of Authorized Agent       Signature of Authorized Agent

______________________________  ________________________________
Typed or Printed Name               Typed Name

______________________________  ________________________________
Title                               Social Security or Taxpayer I.D. No.

Board Approval Date: ______________  ________________________________
(Area Code) Telephone Number

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CONSULTANT 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, Consultant’s employees may have contact with pupils. As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any subConsultant, 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.

Consultant 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.

Consultant 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.

Consultant 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 Consultant’s failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant 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 Consultant agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of Consultant who may come in contact with pupils in the performance of services in this contract.

<table>
<thead>
<tr>
<th>Name</th>
<th>Social Security No.</th>
</tr>
</thead>
</table>

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Company: _____________________________

Name: ________________________________ Title: _____________________________

Signature: ____________________________ Date: ______________________________
UNION SCHOOL DISTRICT

AMENDMENT NO. 1 TO
AGREEMENT FOR ___________ CONSULTANT SERVICES

Amend contract between the Union School District hereinafter referred to as “DISTRICT”, and _________________, hereinafter referred to as “CONSULTANT”.

Whereas a certain Agreement between the parties dated ____________, expires on [Date], and the parties want to extend and continue said Agreement; it is agreed that said Agreement is extended for an additional term commencing upon the expiration of the original term and shall now expire on [Date].

All other terms and conditions of the Agreement shall remain the same.

This extension Agreement shall be binding upon and inure to the benefit of the parties, their successors, and personal representatives.

(“DISTRICT”)

BY: ________________________________ Signature:_________________________
TITLE: ________________________________________________________________
ADDRESS:

Dated at San Diego, California, this ___th day of ______, 200_.

[insert Consultant Name]

BY:______________________________ Signature:_________________________
TITLE: ________________________________________________________________
ADDRESS:

Dated at ______________________, California, this _______day of ________, 200_.
Data Privacy Requirements for Contracts with Technology Providers
(California Education Code § 49073.1)

Technology services agreements entered into, amended, or renewed by a school district on or after January 1, 2015 must follow specific requirements. These requirements apply to contracts for services that utilize electronic technology, including cloud-based services, for the digital storage, management and retrieval of pupil records, as well as educational software that authorizes a third-party provider to access, store and use pupil records. Therefore, it is recommended that any such agreements, including terms and conditions for websites and applications, be reviewed for the following terms:

- Establish that the school district owns and controls student records.
- Describe how students can control content created for education-related purposes, along with a way to transfer content to a personal account later.
- Prohibit third parties from using student information for purposes outside of those named in the contract.
- Describe how parents, legal guardians, or students can review and correct personally identifiable information contained in their records.
- Outline actions that third parties will take to ensure student data is secure and confidential.
- Describe procedures for notifying affected parents, legal guardians, or eligible students in the event of unauthorized disclosure of student records.
- Certify that student records will not be retained or available to the third party once the contract is over and explain how that will be enforced.
- Describe how school districts and third parties will comply with FERPA.
- Prohibit third parties from using personally identifiable information from student records to target advertising to students.

School districts should be cautioned that out-of-state technology providers may not be familiar with these requirements. The penalty for noncompliance with the requirements of Education Code section 49073.1 is that contracts will be voided if, following the provision of notice of deficiency, they do not comply within a reasonable amount of time.

A sample checklist is included to assist school districts in evaluating compliance. In the event that a school district determines an agreement is not compliant with California Education Code section 49073.1, a sample technology contract addendum is also included, which school districts may provide to technology providers to incorporate compliant procedures into existing agreements.

It is recommended that staff be trained to evaluate terms and conditions for data privacy compliance prior to downloading website content or applications for students.
Sample Compliance Checklist for Technology Services Agreements
(California Education Code § 49073.1)

Technology services agreements entered into, amended, or renewed by a California school district on or after January 1, 2015 must follow specific requirements. These requirements apply to contracts for services that utilize electronic technology, including cloud-based services, for the digital storage, management and retrieval of pupil records, as well as educational software that authorizes a third-party provider to access, store and use pupil records. All of the following requirements must be included in such contracts:

☐ A statement that pupil records continue to be the property of and under the control of the school district;

☐ A description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account;

☐ A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract;

☐ A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil’s records and correct erroneous information;

☐ 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 pupil records;

☐ A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil’s records;

☐ A certification that a pupil’s records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced (NOTE: This requirement does not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account.);

☐ A description of how the district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act; and

☐ A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

References: AB 1584; Cal. Educ. Code § 49073.1; 20 U.S.C. § 1232g
Sample Addendum to Technology Services Agreement  
(California Education Code § 49073.1)

This Addendum No. __ is entered into between ________________ [insert school district name] (“District”) and ________________ [insert service provider name] (“Service Provider”) on _________________ (“Effective Date”).

WHEREAS, the District and the Service Provider entered into an agreement for technology services titled __________________________ [insert original contract title] (“Technology Services Agreement”) on _________ and any addenda on _________;

WHEREAS, the District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (“AB 1584”), the California Education Code, the Children’s Online Privacy and Protection Act (“COPPA”), and the Family Educational Rights and Privacy Act (“FERPA”);

WHEREAS, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party service provider must include certain terms; and

WHEREAS, the District and the Service Provider desire to have the Technology Services Agreement and the services provided comply with AB 1584.

NOW, THEREFORE, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement and any addenda are incorporated herein by reference.

2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.

3. Pupil records¹ obtained by Service Provider from District continue to be the property of and under the control of the District.

4. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows: [INSERT PROCEDURE]²

¹ Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records do not include de-identified information (information that cannot be used to identify an individual pupil) used by the third party: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

² Procedure provided will likely depend on the capability of the technology services vendor. The information will likely have to be provided by vendor to demonstrate product compliance.
5. The options by which a pupil may transfer pupil-generated content to a personal account include: [INSERT PROCEDURE]

6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil’s records and correct erroneous information by the following protocol: [INSERT PROCEDURE]

7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: [INSERT PROCEDURE]

8. In the event of an unauthorized disclosure of a pupil’s records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: [INSERT PROCEDURE]

9. Service Provider shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Technology Services Agreement.

10. Service Provider certifies that a pupil’s records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure: [INSERT PROCEDURE]

11. District agrees to work with Service Provider to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure: [INSERT PROCEDURE]

IN WITNESS WHEREOF, parties execute this Agreement on the dates set forth below.

Date: _________________ [Insert District Name]

Date: _________________ [Insert Service Provider Name]
NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the ______________________ School District of San Diego County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT will receive up to, but not later than 2:00 o'clock p.m. of the ____ day of ______, ______, sealed bids for the award of a contract for Bid Name, Bid #.

Each bid shall be submitted on a form obtained at the Purchasing Department of said District, located at ________________, CA 920XXX (mailing address: P.O. Box 1234, _____________, CA 92XXX); or accessible on our website www.xxxxx.net/purchasing shall be sealed and filed in said Purchasing Department and will be publicly opened and read aloud at that stated time and place.

Each bid must conform and be responsive to this invitation, the Information for Bidders, the Specifications, and all other documents comprising the pertinent Contract Documents. Copies of the Contract Documents are now on file and may be obtained in the office of the Director of Purchasing at the above address.

The contract will be awarded to the lowest responsive, responsible bidder meeting specifications. The ______________________ School District reserves the right to reject any or all bids, to accept or reject any one or more items of a bid or to waive any irregularities or informalities in the bids or in the bidding.

Pursuant to Public Contract Code 3400 (c), schools districts may make a finding that certain brand or trade names are necessary in order to maintain conformity among its campuses, compatibility with existing systems, and to streamline maintenance and parts storage. A copy of the finding made by a school district will be incorporated in the bid documents.

No bidder may withdraw his bid for a period of sixty (60) days after the date set for the opening of bids.

In the event of identical bids, the Governing Board may determine by lot which bid shall be accepted per Public Contract Code 20117.

____________________________
Clerk of the Governing Board

____________________________ School District

Publication: (insert name of publication)
Advertising dates: Dates
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INFORMATION TO BIDDERS

1) **Preparation of Bid Form**  The District invites bids on the attached form to be submitted by qualified contractors to the District at such time and place as is stated in the Notice to Contractors Calling for Bids, not later than **2:00 o’clock p.m. of the _____ day of, _____, 20__**. Bids shall be received in the ___________________________________________ School District’s __________ Department, 12345 Main Street, Any City, CA. All blanks in the bid form must be appropriately filled in, and all prices must be stated in both words and figures. If a different price is stated in words than is stated in figures, the price stated in words shall be the price bid. All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. It is the sole responsibility of the bidder to see that his bid is received in proper time and at the designated location. All bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

2) **Securing Documents**: Specifications, and other contract document forms will be available without charge, and may be secured by prospective bidders at the office of:

   Name
   Title
   ________________________________ School District
   Address

3) **BID SUBMISSION**: Bids to receive consideration shall be made in accordance with the following instructions:

   a. Bids shall be made upon the form therefore obtained at the office of the Director of Purchasing properly executed. Bids shall be written in ink or typed before submission. Bids are to be verified as they cannot be corrected after bids are opened. The signature of all persons signing shall be in longhand. The completed form shall be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless requested in the specifications. No oral or telegraphic modifications will be considered.

   b. Before submitting a bid, bidders shall carefully examine specifications, and the forms of other documents. They shall fully inform themselves as to all existing conditions and limitations, and shall insure that unit cost and total cost is reflected in the bid. No allowance will be made because of lack of such examination or knowledge.

   c. All bids must be under sealed cover. District will not accept any bids or bid modifications submitted by facsimile or electronic mail transmission.

   d. The bid must be signed in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

   e. Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the District's rejection of the bid as not being responsive to the invitation to bid. Bids may be modified or withdrawn by written notice or in person by a bidder if the request is received prior to the exact hour and date set for the bid opening.

   f. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid.
The use of the name of a manufacturer, or any special brand or make, in describing any item in the Contract Documents does not restrict bidders to that manufacturer or specific article. An equal of the named product will always be given due consideration. Vendor shall submit a **Product Substitution Request with all supporting documentation** by __________, 20__16 at ___:00 p.m. Items offered as a substitute to a specified product may be required to be submitted for demonstration.

All equipment on which bids are submitted must in all cases be equal or better in quality and utility to those manufacturers or brands specified by the District.

The make or brand and grade of the article on which bid is submitted should be stated in the bid form. When the make or brand and grade of the article is not stated it will be understood to be the specific article named by the District.

No bid shall include California sales or use tax, or Federal excise tax.

All bids on items shall be f.o.b. school district.

No charge for packing, draying, postage, express, or for any other purpose will be allowed over and above the prices bid.

When requested bidders shall submit properly marked samples of each such article, on which bid is made to:

________________________________________________________________________

School District

Each sample submitted must be marked in such manner that the marking is fixed, so that the identification of the sample is assured. Such marking shall state (1) name of bidder, (2) number of bid, (3) item number. Bid and samples must not be sent in the same package.

Samples of items, when required, must be furnished free of expense to the District and if not destroyed by tests, will, upon request, be returned at the bidders expense.

All articles awarded on contract shall be subject to inspection and rejection. All expenses incurred in connection with furnishing articles for inspection shall be borne by the vendor.

4) **Bid Security**  
No Bid Bond is required (or add requirements for bid security)

5) **Addenda or Bulletins:** Any addenda or bulletins issued by the District during the time of bidding or forming a part of the documents loaned to the bidder for the preparation of this bid shall be covered in the bid and shall be made a part of the contract. It is the sole responsibility of the bidder to ensure all addenda are accounted for in the bid prior to submission.

6) **Withdrawal of Bids Prior to Opening:** Any bidder may withdraw his bid, either personally or by a written request, at any time prior to the scheduled time for opening of bids.

7) **Withdrawal of Bids After Opening:** No bidder may withdraw his bid for a period of sixty (60) days after the date set for the opening of bids.

8) **Opening of Bids:** Bids will be opened and publicly read aloud at the time and place scheduled in the NOTICE TO BIDDERS. Bids shall be enclosed in a sealed envelope bearing the description of the bid call, the name of the bidder, and date and hour of the opening. **IT IS THE SOLE RESPONSIBILITY OF THE BIDDER TO SEE THAT HIS BID IS RECEIVED IN PROPER TIME.**
Any bids received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

9) **Award or Rejection of Bids:** The Contract will be awarded to the lowest responsive and responsible bidder(s). The Governing Board of the ____________________, however, reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, and to waive any informality in the bids or in the bidding.

10) **Equal Bids:** When bids are equal, they shall be awarded by a drawing of lots, and shall be witnessed by three (3) impartial observers.

11) **Interpretation of Documents:** If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the contract documents or finds discrepancies, in or omissions from, the Specifications, he may submit to the Director of Purchasing of the District a written request for an interpretation or correction hereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or addendum duly issued by said Director of Purchasing and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The District will not be responsible for any other explanation or interpretation of the proposed documents.

12) **Bidders Interested in More Than One Bid and Bidders Not Qualified to Bid:** No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders or making a prime proposal. **No person, firm, or corporation shall be allowed to bid who has participated in the preparation of contract specifications; a bid by such a person, firm or corporation shall be determined to be non-responsive.**

13) **Liquidated Damages:** The District shall hold the successful bidder liable and responsible for all damages which may be sustained because of his failure to comply with any conditions herein. If the successful bidder fails to furnish or deliver any material, supplies, equipment, or services at the prices quoted, or at the times and places stated, or otherwise fails to comply with the terms of the documents in their entirety, the District may purchase the items herein specified elsewhere, without notice to the successful bidder. Costs accrued by the District for a purchase resulting from a failure to perform, shall be invoiced to the successful bidder or payment may be deducted from future invoices. Prices paid by the District shall be considered the prevailing market prices at the time such purchase is made. In addition, a charge of $50.00 will be assessed to cover administrative costs for processing of third party orders resulting from non-performance.

14) **Demonstrations:** It is the responsibility of the bidder to bid items comparable in quality to the brands specified. If the District considers a need, bidder shall be required to arrange demonstrations of item or services bid. Failure to be able to provide such working demonstration may disqualify the bidder's bid submittal. All demonstrations shall be provided free of charge to the district. Bidders may be required to reimburse the District for travel to demonstrations not held at District's facility.

15) **District Inspection:** All items shall be subject to the inspection of the District. Inspection of the items shall not relieve the bidder from any obligation to fulfill this contract. Defective items shall be made good by the bidder, and unsuitable items may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the District and accepted. If any item shall be found defective at any time before final acceptance of the complete delivery, the bidder shall immediately remedy such defect in a manner satisfactory to the District.
16) **Restricted Bid:** Only those companies fully licensed, equipped and experienced in the work being performed, with skilled personnel immediately available and able to obtain necessary components immediately, shall be considered qualified bidders for this contract.

17) **Equal Employment Opportunity:** In connection with the execution of this contract, bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The bidder shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off, termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. Bidder must sign the AFFIRMATIVE POLICY which must be attached and become a part of the bid. See Attachment A.

18) **Hold-Harmless Clause:** Bidder shall indemnify and hold _______________________ School District, its officers, agents, and employees harmless from and against any and all loss, liability and expense (including Attorney's fees) of any nature or kind whatsoever, on account of use by the publisher or author, manufacturer or agent of any copyrighted or non-copyrighted composition, secret process, trademark, patented or unpatented invention, article or appliance furnished or used under this quotation.

19) **Public Liability And Property Insurance:** Successful bidder shall maintain during the life of this contract Public Liability and Property Damage Insurance to protect themselves and the District from all claims for personal injury, including accidental death, as well as from all claims for Property Damage arising from the operations under this Contract. The minimum amounts of such insurance shall be as hereinafter set forth. Successful bidder will be required to furnish certificates of insurance prior to start of work.

Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): Not Less Than: $1,000,000/$2,000,000 Aggregate.

Property Damage Liability Insurance including auto (both owned and non-owned): Not Less Than . . . $2,000,000 Aggregate.

Insurance certificate must name ____________________________ School District as additional insured.

Certificate to be submitted by successful bidder prior to start of work.

20) **Agreement:** The form of agreement, which the successful bidder, as contractor, will be required to execute, is included in the contract documents and should be carefully examined by the bidder. The agreement will be executed in two (2) original counterparts. The complete contract consists of the following documents: The Notice to Bidders, the Information for Bidders, the Accepted Bid, the Specifications, and the Agreement, including all modifications thereof duly incorporated therein. All of the above documents are intended to cooperate and be complementary so that any instructions or requirements called for in one and not mentioned in the other, or vice versa, are to be executed the same as if mentioned in all said documents. The intention of the documents is to include all labor, materials, equipment, transportation and services necessary for the proper delivery and installation of all items called for in the Contract. The original term of this agreement will be for seven months starting ______, ______ through ________, ______.

21) **Contract Renewals:** If mutually agreeable, the District reserves the right to renew the contract for two (2) additional years. This renewal is contingent upon competitive pricing and upon all terms and conditions of the original contract having been met to the satisfaction of the District. Such renewal
will be made by notifying the vendor, in writing, thirty (30) days prior to the expiration of the contract. See Attachment D.

22) **Assignment of Contract:** The successful bidder shall agree not to assign, transfer, convey, sublet, or otherwise dispose of the items appearing on this bid form, which he may be awarded, or any rights accruing thereunder, title or interest therein, funds to be received hereunder, or any power to execute the same without the consent in writing of District Governing Board. Notice is hereby given that the District will not honor any assignment made by the Contractor unless the consent in writing, as indicated above, has been given.

23) **Tobacco-Free District:** The _____________________________ School District has been designated as a tobacco-free District. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of District property and in District vehicles.

24) **IRS Requirements:** The District shall view the legal position of the bidder as an "independent contractor" and that all persons employed to furnish services are employees of the bidder and not of the District.

   a) The District shall not be liable for any of the contractor's acts or omissions performed under the contract to which the bidder is party.

   b) The bidder will complete IRS form W-9 providing tax payer identification number and also indicate whether bidder is a corporation, sole-proprietor, partnership, individual, etc. This form must be on file with the District within sixty (60) days from the date of the contract start date.
BID FORM

1. Pursuant to and in compliance with your Notice to Bidders and other documents relating thereto, the undersigned Bidder, having thoroughly familiarized itself with the terms of the Agreement, the Specifications, and all of the Contract Documents, hereby proposed and agrees to perform, within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, all in strict conformity with the specifications and other Contract Documents, including Addenda Nos.______, ______, ______, and _______, on file at the Purchasing Office of the issuing District for the prices set opposite the articles listed herein.

2. It is understood that the consortium reserves the right to reject this bid in whole or in parts; to waive information in the bids or bidding, and that this bid shall remain open and not be withdrawn for a period of sixty (60) days from the date prescribed for the opening of this bid.

3. It is understood that the successful bidder will be required to deliver:

   ______________________________________________________________________

   This bid is to cover the period of **July 1, 2018** through **June 30, 2018**, and may be renewed for up to two (2) one-year periods.

4. It is understood and agreed that if written notice of the acceptance of this bid if mailed, telegraphed, or delivered to the undersigned within sixty (60) days after the opening of the bid, or at any time thereafter before this bid is withdrawn, the undersigned agrees that they will execute and deliver to the Consortium a contract in the form attached hereto in accordance with the bid as accepted, within five (5) days after the receipt of notification of award, and that performance of the contract shall be commenced immediately by the undersigned bidder upon due execution and delivery to the Consortium Agreement of said Contract Documents.

5. Notice of acceptance or requests for additional information should be addressed to the undersigned at the address stated below.

6. The names of all persons interested in the foregoing proposal as principals are as follows:

   ______________________________________________________________________
   ______________________________________________________________________
   ______________________________________________________________________.

**NOTE:** Bid form format will vary. With lengthier bids, a separate form may be included here by reference and attached to bid. Single line item bids would only require one Total Bid Price Line such as for a vehicle, while other goods bids are often multiple line, unit price bids.

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<th>Annual</th>
<th>Description</th>
<th>Brand and Model</th>
<th>Unit Price</th>
<th>Extended Price</th>
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<td>Est. Qty.</td>
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<td>2.</td>
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</table>
Total Bid Price:

__________________________________________________________ dollars and _______ Cents.

($ ________________

($ ______________)
**DEPARTMENT LOCATIONS & ADDRESSES**

Deliveries are to be made between the hours of ________ and ________. When students are present, the use of a spotter will be required when entering or exiting school grounds.

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<tr>
<th>Site Name</th>
<th>Site Address</th>
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**Delivery instructions are important when delivery is not centralized. Make sure to incorporate delivery instructions such as date and time.**
REFERENCES

Include with your bid submittals, a list of no less than three (3) customer references including company/organization name, contact name, phone number, and description of work/contract services.

RENEWAL

Bidder to indicate in space provided if it accepts the option to renew for the following periods and at what percentage:

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<tr>
<th>Dates</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
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<td>7-1- to 6-30-</td>
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</table>

The individual signing this Agreement warrants that he or she has the full authority of the entity on behalf of which his or her signature is make.

I, __________________________, the __________________________of the bidder, hereby certify under penalty of perjury under the laws of the state of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct.

Proper name of Individual, Company or Corporation

Authorized Signature

Type or Print Signer's Name

Title

Address

Telephone

Date
INSTRUCTIONS AND CONDITIONS

1. AWARD AND ADMINISTRATION: This contract is being awarded by the ______________ School District and will be administered by ________________, Director of Purchasing.

2. ORDERING: Orders are to be fulfilled as scheduled. Any additional supplies will be ordered on an as needed basis.

3. TERMS: All terms set forth in the bid shall apply to all districts using this contract. Terms shall include but not be limited to price, delivery, applicable discounts, service, and packaging.

4. ESCALATION: All pricing quoted herein shall remain firm through _____, ___. Price increases on renewal years may not exceed the percentage indicated on the Renewal Form. A price increase, if exercised, shall be fully justified by vendor and proved by a test of the market and/or submission of documents. Percentage increases will be taken into account when reviewing the renewal options. At no time shall an increase exceed ___ percent (_%).

5. DE-ESCALATION: In the event that the market conditions change resulting in a price decrease, it is expected that the successful bidder shall pass those savings onto the District.

Alternative language to #4 and #5

INCREASE OR DECREASE IN PRICE:

a) Increase in Price: During the life of this contract, the Contractor may request a price increase for good cause. Good cause will be determined in the sole discretion of the Consortium. The decision of the Consortium shall be final. The Contractor is expected to perform at the bid price throughout the term of the contract. A price increase request, however, will be considered. When addressing the question of whether there is good cause to grant a price increase, the Contractor must submit a request in writing thirty (30) calendar days in advance of the next scheduled meeting of the Consortium. Meeting dates are posted at www.ncepc.org. A determination of good cause will take into consideration increases in costs such as raw materials and labor. The Contractor must present written evidence of good cause and shall bear the full burden of providing such evidence. No increase will be allowed sooner than 180 calendar days from the date of contract award, including thirty (30) calendar days advance written notice and a regularly scheduled NCEPC Board meeting. No price increase will go into effect until NCEPC board approval.

b) Decrease in Price: During the life of the contract including any extensions, there may be a general published manufacturer's price change or a general market change, as evidenced by prices paid by other governmental entities or private organizations. The change in price may relate to the cost of materials, labor, or distribution of the product or service specified. Should such a change in price occur, the Contractor has an affirmed duty to notify the Consortium of decreases in price and to extend the full decrease to the Consortium. Failure of Contractor to notify the Consortium and/or extend such decrease may be deemed a breach of contract.

6. STOCK AVAILABILITY: Vendors will stock items proposed with the guarantee to buyer that there will be no stock-outs. Vendors must contact the district within twenty-four (24) hours of a stock-out beyond their control.

7. INVOICING & PAYMENTS: Within thirty (30) days of receipt of a proper invoice and after delivery of any or all of the items hereinabove set forth and their acceptance by the ordering district; the ordering district agrees to pay to the Contractor, and the Contractor agrees to accept in full payment therefor, the sums set opposite each item.
All invoices are to be submitted in duplicate and mailed in accordance with instructions as shown on purchase order (unless otherwise noted).

All invoices shall be forwarded to the address noted on the purchase order and marked:

________________________ SCHOOL DISTRICT
ATTENTION: ACCOUNTS PAYABLE

Invoices will be returned for correction unless they contain the following information: Item numbers; Description of Item; Quantity; Unit Price Extensions and Total. Each invoice shall carry the Purchase Order Number of THE DISTRICT. The original and one copy shall be forwarded to the office listed above.

Payment in full will only be made upon final acceptance of items as shown on Purchase Order.

The Bidders that request prompt payment of bills shall send signed delivery tickets with the invoice to facilitate expedited payment.

Delivery shall be FOB Destination Freight Prepaid and allowed to each individual location as noted on the Purchase Order.

THE DISTRICT’s standard terms for payment are Net 30 days. All discounts, including prompt payment, shall be included in bid price.

8. LATE FEES: In the event that the Contractor fails to deliver the ordered goods by the time specified in the contract, the ordering district may impose a late fee charge. This charge shall be taken as a credit against the Contractor's invoice to the ordering district. The late fee charge shall be imposed at a rate of 2.5% per calendar day against the total dollar value (before tax) of the late delivered goods. This late fee shall commence on the first day following the end of the specified delivery period.

Assessment of late fees shall not negate any of the other rights and remedies stipulated in the contract. Any agreement between ordering district and Contractor changing the specified delivery date must be in writing. Late fees will be assessed if Contractor fails to meet the revised delivery date.

9. EVALUATION CRITERIA: This bid will be evaluated on the following factors to determine responsiveness and responsibility of bidder: price, competency, credibility, and compliance with all aspects of the specifications, exceptions that may be noted, and any other factors that may arise during the review process after bid opening. Bids that are deemed to be nonresponsive or bidders that are found to be non-responsible will be rejected in accordance with Public Contract Code and due process procedures.

10. AWARD OF BID: Bid will be awarded to the lowest responsive and responsible bidder.

11. MULTIPLE AWARDS: On line item bids, the DISTRICT reserves the right to award this contract to multiple bidders, or to group like items and award in lots.

12. BRAND NAMES AND MODEL NUMBERS: Bidders may find discrepancies in the model numbers given in that the model number may be an old one and the item is now referred to by a new number. Consideration will be given in that situation. Please note that you are bidding on the same item as specified by designating "New Number" in the "Brand/Model" area, should that be the case.
13. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets (MSDS) marked with the appropriate bid item number, must be included with the bid on items where indicated in the specifications. Bidders may be considered non-responsive and bids may be rejected due to failure to include MSDS with bid documents when called for in the bid documents.

14. DEVIATIONS FROM BID TERMS & CONDITIONS: Deviations from any bid term or condition may cause your bid to be rejected as nonresponsive. All deviations must be clearly noted at time of bid submission. If not noted, the assumption is that bidder is bidding as specified.

15. DISCONTINUED AWARDED LINE ITEMS(S): Awarded bidders are required to immediately notify the bid administrator of manufacturers discontinued awarded line item(s). Official notification must be in written format via USPS, fax, or email referencing the bid number and line item number with written proof from the manufacturer of the discontinuance.

16. REPLACEMENT OF DISCONTINUED AWARDED LINE ITEM(S): A replacement will be considered if, and only if, the proposed replacement is the newest line model and is equal to or exceeds the discontinued line item(s) specifications, and is offered for an equal or lesser price. A replacement cannot be a model from a different line. Contractor shall provide substantiating information when requesting consideration of a substitution as an equal. Office notification must be in written format via USPS, fax, e-mail referencing the bid number and the line item number.

17. TOLL-FREE TELEPHONE NUMBER: All responding vendors outside the San Diego County area must provide a toll-free telephone number on their bid form. Acceptance of collect calls is not an acceptable alternative. Failure to provide a toll-free telephone number on the bid form by vendors outside the San Diego County area will cause the entire bid to be considered non-responsive and rejected.

18. FAILURE TO FULFILL CONTRACT: When any contractor or vendor shall fail to deliver any article or service or shall delivery an article or service which does not conform to the specifications, the District may, at its sole discretion, annul and set aside the contract entered into with said vendor or contractor, either in whole or in part, and make and enter into a new contract for the same items in such manner as seems to be to the best advantage for the District. Any failure for furnishing such articles or services by the vendor or contractor, as stated above, shall be a liability against such vendor and his sureties. The District reserves the right to cancel any articles or services which the successful bidder may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the bidder provided satisfactory proof is furnished to the District, if requested.

19. CANCELLATION FOR INSUFFICIENT OR NON-APPROPRIATED FUNDS: The bidder hereby agrees and acknowledges that monies utilized by the District to purchase the items bid is public money appropriated by the State of California or acquired by the District from similar public sources and is subject to variation. The District fully reserves the right to cancel this bid at any time and/or to limit quantities of items due to non-availability or non-appropriation of sufficient funds.
NONCOLLUSION DECLARATION TO BE EXECUTED
BY
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the ____ of ____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid 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 bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder 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 bidder.

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 this:

_____________ day of __________________

City of ______________________  State of ___________________________

Signed:  ____________________________________________
Title: ____________________________________________

AGREEMENT

THIS AGREEMENT, made and entered into this day of ________ , 20___, by and between the _____________________________ School District, San Diego County, California,
hereinafter called the District, and hereinafter called the Contractor.

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. **THE CONTRACT DOCUMENTS:** The complete contract consists of the following documents: The Notice to Bidders, the Information to Bidders, the Accepted Bid, the General Specifications, and the Agreement, including all modifications thereof duly incorporated therein. Any and all obligations of the District and the Contractor are fully set forth and described therein or are reasonably inferable that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in said documents. The documents comprising the complete Contract are sometimes hereinafter referred to as the Contract Documents, or the Contract.

2. **THE MATERIALS AND SUPPLIES:** The contractor agrees to furnish the item or items of the stated bid listed herein, and all transportation, service, labor, and material necessary to furnish and deliver same in good condition, in the manner designated in, and in strict conformity with the specifications and other contract documents, at the price or prices hereinafter set forth. Member districts shall not be responsible for the care or protection of any property, material, or parts ordered against said contract before date of delivery to the respective district. It is understood by the Contractor that all items or service will be promptly delivered to the District.

3. **PAYMENTS.** By the fifth day of each month, contractor shall submit an itemized invoice in duplicate of materials delivered through the previous month. District shall pay contractor the full amount of each invoice within thirty (30) days of receipt.

4. **TERMINATION FOR DEFAULT:** If the said Contractor fails or neglects to supply or deliver any of said goods, articles, or service at the prices named and at the times and places above stated, the District may, without further notice or demand, cancel and rescind this contract or may purchase said goods, supplies, or services elsewhere, and hold said Contractor responsible and liable for all damages which may be sustained thereby, or on account of the failure or neglect of said Contractor in performing any of the terms and conditions of this contract; it being specifically provided and agreed that time shall be the essence of this agreement.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

5. **DISTRICT’S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF:** The District may authorize a member district to withhold a sufficient amount or amounts of any payment otherwise due to the Contractor, as in its judgment may be necessary to cover defective items not remedied, and the District may apply such withheld amount or amounts to the payment of such claims, in its discretion.

6. **EXTRA AND/OR ADDITIONAL SPECIFICATIONS AND CHANGES:** Should the District at any time during the performance of the contract, request any alterations, deviations, additions, or omissions from the Specifications or other Contract Documents, it shall be at liberty to do so, and the same shall in no way affect or make void the Contract, but the cost will be added to or deducted from the amount of said Contract price, as the case may be, by a fair and reasonable valuation.

The estimated cost of a proposed change shall be established in one or more of the following methods:
a) By an acceptable lump sum proposal from the Contractor.

b) By unit prices agreed upon by the District and the Contractor.

No change shall be made in any specification of any item under the Contract unless a written statement setting forth the object of the change, its character, amount, and the expense thereof is first submitted to the District and written consent thereto obtained.

7. TIME OF COMPLETION: The Contractor shall begin performance of the Contract promptly upon due execution and delivery to the District of the Contract and Bond (if required). The Contractor is obligated to completely and satisfactorily perform the Contract within the period or periods specified in the Contract documents.

8. HOLD HARMLESS: The Contractor must save, keep, bear harmless and fully indemnify said District and any of its officers or agents from all damages, or claims for damages, costs or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights, copyright, or trademark of any person or persons in consequence of the use by said District or by any of its officers or agents, or articles to be supplied under this contract.

9. THE DISTRICT'S INSPECTOR: All items shall be subject to the inspection of the District. Inspection of the items shall not relieve the Contractor from any obligation to fulfill this Contract. Defective items shall be made good by the Contractor, and unsuitable items may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the District and accepted. If any item shall be found defective at any time before final acceptance of the complete delivery, the Contractor shall forthwith remedy such defect in a manner satisfactory to the District.

10. REMOVAL OF REJECTED ITEMS: All items rejected by the District at any time prior to final inspection and acceptance shall at once be removed from the place of delivery by the Contractor who shall assume and pay the cost thereof without expense to the District, and shall be replaced by satisfactory items.

11. DELAY DUE TO UNFORESEEN OBSTACLES: 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, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is also established that the non-performance is not due in part to the fault or neglect of the party not performing.

12. ASSIGNMENT OF CONTRACT: The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof, or any right, title, or interest therein, funds to be received hereunder, or any power to execute the same without the consent in writing of the District.

13. ATTORNEYS' FEES: If suit is brought by either party to this Contract to enforce any of its terms (including all component parts of the contract documents), and the District prevails in such suit, the Contractor shall pay all litigation expenses incurred by the district, including attorneys' fees, court costs, expert witness fees and investigation expenses.

14. CONTRACTOR IS NOT AN OFFICER, EMPLOYEE, OR AGENT OF THE DISTRICT: While engaged in carrying out and complying with the terms and conditions of this Contract, the Contractor is an independent contractor, and is not an officer, employee or agent of the District or its member districts.
15. INSURANCE PERMITS AND LICENSES REQUIRED OF THE CONTRACTOR: The Contractor shall maintain insurance adequate to protect him/her from claims under workers' compensatory acts, and from claims for damages for personal injury including death, and damage to property which may arise from operations under the Contract in amounts specified in the Specifications. The Contractor may be required by the District to file with the District certificates of such insurance. The failure to furnish such evidence, if required, may be considered default by the Contractor.

The contractor and all of its employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of materials, articles, or services covered under this Contract. All operations and materials shall be in accordance with the law.

16. CONDITIONAL BID: The District reserves the right to reject any bid which imposes conditions, or terms, on purchases, which were not specified in the original bid document.

IN WITNESS WHEREOF, the District, by order of its Governing Board, has caused this instrument to be duly subscribed by the Secretary of said Board, and the Contractor has caused this instrument to be duly subscribed and executed, all on the date first hereinbefore set forth.

CONTRACTOR:

___________________________________

By ________________________________

Title ________________________________

Date: ________________________________

Governing Board Date ________________

DISTRICT:

___________________________________ School District

By ________________________________

Title ________________________________

Date: ________________________________
The following certifications may be required if any purchases resulting from this bid utilize federal funds. See Education Department General Administrative Regulations (EDGAR). The presenters do not warrant that all of these certifications are required or that any other certifications may be necessary. Districts are responsible for verifying with the federal awarding agency that they are complying with all federal and state purchasing requirements.

Note, DVBE compliance may be required if any State Facility Bond funds are expended on purchases resulting from this bid.
FEDERAL CERTIFICATIONS

The following certifications are required when using federal funds for the purchase or goods and services.

PROPOSER/VENDOR CERTIFICATION FORMS

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

The following provisions are required and apply when federal funds are expended for any contract resulting from this procurement process.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by ______________________ School District, ______________________ School District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?     YES _______ Initials of Authorized Representative of Vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

Pursuant 7 CFR 1780.75, when federal funds are expended by a member district, the NCEPC reserves the right to immediately terminate any agreement in excess of $10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The NCEPC also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if in its sole discretion that it is in the best interest of NCEPC to do so. The vendor will be compensated for work performed and accepted and goods accepted by any member district as of the termination date if the contract is terminated for convenience of the NCEPC. Any award under this procurement process is not exclusive and the NCEPC reserves the right to purchase goods and services from other vendors when it is in the best interest of the NCEPC.

Does vendor agree to abide by the above?     YES______ Initials of Authorized Representative of Vendor
(C) Clean Air Act (42 U.S.C. 7401-7671q,) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by a member district, the vendor certifies that during the term of an award for all contracts resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES_________Initials of Authorized Representative of Vendor

(D) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM

Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (D) above, when federal funds are expended by a member district, the vendor certifies that during the term of an award for all contracts resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES_________Initials of Authorized Representative of Vendor


Pursuant to Federal Rule (E) above, when federal funds are expended by a member, the vendor certifies that during the term and after the awarded term of an award for all contracts by a member district resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the
entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES_________ Initials of Authorized Representative of Vendor
IRAN CONTRACTING ACT
CERTIFICATION OF ELIGIBILITY TO BID FOR CONTRACTS OF $1 MILLION OR MORE
(Public Contract Code sections 2202-2208)

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars ($1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION
I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

Vendor Name/Financial Institution (Printed)  Federal ID Number (or n/a)
By (Authorized Signature)
Printed Name and Title of Person Signing
Date Executed  Executed in

OPTION #2 – EXEMPTION
Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

Vendor Name/Financial Institution (Printed)  Federal ID Number (or n/a)
By (Authorized Signature)
Printed Name and Title of Person Signing  Date Executed
RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS

2 CFR § 200.333

When federal funds are expended by a member district for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR §200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _______ Initials of Authorized Representative of Vendor

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by a member district for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.; 49 C.F.R. Part 18; Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES_______ Initials of Authorized Representative of Vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor’s Name/Company Name: ____________________________
Company registered on SAM.gov? Yes __________ No ____________________________
Address, City, State, and Zip Code: ____________________________
Phone Number: ____________________________ Fax Number: ____________________________
Printed Name and Title of Authorized Representative: ____________________________
Email Address: ____________________________
Signature of Authorized Representative: ____________________________ Date: ____________

Must be completed and returned with Proposal
MISCELLANEOUS SAMPLE POLICIES, DOCUMENTS, & FORMS
STANDARDS OF PURCHASING PRACTICE

- To regard public service as a sacred trust, giving primary consideration to the interests of the governmental entity by whom we are employed.

- To purchase the best value obtainable, securing the maximum benefit for each tax dollar expended.

- To avoid unfair practices, giving all qualified vendors an equal opportunity.

- To respect our obligations to our organization.

- To accord vendor representatives the same treatment we should like to receive, remembering that they are important sources of information and assistance in our buying problems.

- To strive constantly for greater knowledge of purchasing methods and of the materials we buy.

- To be receptive to counsel from our colleagues and to cooperate with them to promote a spirit of unity.

- To conduct ourselves with fairness and dignity and to demand honesty and truth in buying and selling.

- To cooperate with all organizations and individuals engaged in enhancing the development and standing of the purchasing profession.

- To remember that everything we do reflects on the entire purchasing profession and to govern our every action accordingly.
ETHICS

I. PURCHASING ETHICS

A. Definition

For the term "Ethics," the dictionary provides the following definition:

A theory or system of dealing with the moral values of an individual or group.

Our culture places a great deal of emphasis on the separation of church and state. We would not presume to address anyone in this seminar about their individual moral values. This is a purchasing seminar. We are discussing common ordinary practical business sense. It is important to recognize that the discussion of ethics does not involve the examination of right or wrong behavior in the religious sense. Thus the definition of Purchasing Ethics is the following: A system of dealing with the moral values of the Purchasing profession.

II. PURCHASING ETHICS

B. From these principles are derived the N.A.P.M. standards of Purchasing practice.

1. To consider, first, the interests of his company in all transactions and to carry out and believe in its established policies.

2. To be receptive to competent counsel from his colleagues and to be guided by such counsel without impairing the dignity and responsibility of his office.

3. To buy without prejudice, seeking to obtain the maximum ultimate value for each dollar of expenditure.

4. To strive consistently for knowledge of the materials and processes of manufacture, and to establish practical methods for the conduct of his office.

5. To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery.

6. To accord a prompt and courteous reception, so far as conditions will permit, to all who call on a legitimate business mission.

7. To respect his obligations and to require that obligations to him and his concern be respected, consistent with good business practice,

8. To avoid unfair business practices.

9. To counsel and assist fellow purchasing agents in the performance of their duties, whenever occasion permits.
10. To cooperate with all organizations and individuals engaged in activities designed to enhance the development and standing of purchasing.

Purchasing executives and their buyers must be above suspicion in matters of ethics. Even though a buyer's actions are in fact ethical, if a vendor believes a buyer has not been entirely ethical, the buyer and his firm both suffer as a result of the vendor's false impression. Whenever honesty or ethics are involved, purchasing personnel cannot afford to give anyone the slightest reason to question their actions.

How do purchasing executives ensure that their department's performance will be above suspicion? This is no easy task because of the difficulty in classifying some activities as being distinctly ethical or unethical. Two approaches, however, can be used as "starters" in seeking to achieve this objective. First, definite policies on all matters involving ethics should be formulated and clearly communicated to all personnel. Second, an attempt should be made to create a working atmosphere where unethical temptations seldom become realities.

C. Enforcement Of Ethical Considerations / Conflicts Of Interest

Departmental policy should make it clear that buying personnel engage in unethical activity at the risk of losing their jobs. These activities should then be defined as completely as possible. Commercial bribery, (accepting "kickbacks" from suppliers) obviously falls in this category. Although many firms fail to recognize it, the acceptance of gifts and entertainment simply constitutes a subtle, though lesser, form of bribery. Any action which places a buyer under obligation to a vendor can influence buying decisions. For this reason, progressive company policy prohibits the acceptance of all gifts other than advertising novelties. The acceptance of any entertainment other than a simple meal should also be prohibited.

NO discussion of ethics is complete without at least a brief review of situations that can create a "conflict of interest" for purchasing personnel. Such a situation occurs when a buyer's loyalty is divided between his firm and an external organization with which he has an opportunity to do business.

Perhaps the most common example is the case in which a buyer is a substantial stockholder in a supplier's firm. By placing a large volume of business with that supplier, the buyer could possibly benefit personally. Consequently, to prevent the possibility of personal gain from influencing buying decisions, most companies do not permit purchasing personnel to hold significant investments in potential suppliers' firms. The critical factors are (1) the relative size of the buyer's investment, and (2) the buyer's ability (through his purchases) to influence the supplier's profit position. Clearly, a buyer who purchases 25 automobiles per year, and also owns 50 shares of General Motors stock, does not have to worry about a conflict of interest.

Buying from friends or relatives may also create potential conflicts of interest. If the supplying firm is owned by a friend or relative, a variation of the situation just discussed exists. If the friend or relative serves in a sales or high level managerial capacity, a less obvious but equally dangerous potential conflict is present. A wise
purchasing person clearly should make every effort to avoid buying situations that have even the slightest possibility for producing a conflict of interest.

III. VENDOR RELATIONSHIPS

Representative of Company
- Maintain standard of conduct / credit to company
- Relationship with vendor/salesman
- Good business ethics/personal integrity

Buyers expect from Salesman
- Lowest competitive price / maintaining quality and service
- Protect inventory loss & obsolescence
- Info new products
- Communications
- Fair & Honest
- Delivery Service/Emergency

Salesman expect from Buyers
- Listen and keep an Open mind
- Request special/rush only when needed
- Fair & Honest
- No false encouragement

Buyer Responsibilities
- Know supplier capability
- Realistic technical, quality delivery requirements
- Supply specifications as necessary

Supplier Responsibilities
- Know supplier Capabilities
- Meet quality & delivery requirements
- Know lead times of devices supplied
- Should not expect adjustments of price or delivery during completion of contract

IV. SPEAKERS SIMPLIFIED ETHICS ACRONYMS

In order to more easily remember some of the main ethics principles, I use the acronym "CHAP". In times of wonderment or doubt, I say to myself "Be a good CHAP!". If you're of the opposite gender, you might use "LASS".

C onsiderate
H onest
A ware
P olite
L ikeable
A ware
S ensitive
S incere

A. Considerate

1. When you have 5 pages of changes to a 25 page specification, do you
insist on reading them to the sales representatives over the phone or do you provide a copy by FAX or mail then phone?

2. When you are on a business trip do you consider that just because you are away from home doesn’t mean that the supplier’s personnel want to work late or baby-sit you? If you think you may need to work late do you give them advance notice?

3. When you escalate a problem, do you provide the person you have been dealing with an appropriate indication? Do you provide the person to whom you are escalating a problem at least a brief background to the problem and who in their area is equipped to confirm or deny your perspective of the problem.

B. Honest

1. True rule: it is no lie where the truth is not expected.

2. True rule: be as clear, and communicative and as literal as possible.

3. True rule: the surest way to maintain credibility is to tell the truth.

4. Alternatives for difficult situations:
   a) Talking officially vs. unofficially. What you say officially you will state not only now in a one on one situation but you will repeat tomorrow to the world even though you might wish you had never made the statement. What you say unofficially is a sharing of your personal thoughts on a particular matter and you openly publicize that you will deny the conversation ever took place if put on the spot.
   b) Not in position to talk. Make a positive statement that you are not in a position to discuss that aspect of the situation. Set a date to advise when, if ever, that you may be in that position.

5. Have you been fair? Tried to look at both sides?

C. Aware

1. Not everyone is ethical and/or honest.

2. Disclosure of the truth a little bit at a time may sometimes be the best way to get both parties to put the total truth on the table.

3. Preparation for discussions is always to be preferred over the "lets play it by ear" approach.

4. Some people attempt to intimidate you by being rude, brusque and generally offensive.
D. Polite

1. Most people most of the time, appreciate being treated with courtesy and respect.
2. They will reciprocate in kind.
3. Especially be polite to people who initially appear rude, inconsiderate and generally offensive. If it continues, do not do business with them.
What is a Purchasing Agent?

1. Personal Qualities

   How do your appearance, manner and bearing impress others?
   Are you mentally alert?
   How effective are your voice and speech?
   How well do you express yourself orally and in writing?
   Are you emotionally poised?
   How do your initiative and resourcefulness measure up?
   How well do you meet the physical demands of your job?

2. Occupational Qualities

   How well do you know commodities?
   How well do you know and use basic purchasing skills?
   Are you well prepared for negotiation?
   Are you a good listener?
   What is your intra-district influence?
   Are your public relations good?
   Do you seek competent counsel?
   How do you react to recommendations or constructive criticism of a professional nature?
   What do you do to understand your job better?
   Do you comply with district policies and procedures?

3. Major Responsibilities

   Do you receive representatives of present or potential vendors courteously and expeditiously, and give them a reasonable amount of time to conduct their business?
   Do you avoid sharp practices?
   Do you accept bids at face value if they are known to be reasonable? Do you avoid taking advantage of obvious errors?
   Do you recognize that a vendor must make a fair profit in order to assure the buyer of adequate supply and service?
   Do you advise a vendor promptly with regard to awarded business and furnish desired information to unsuccessful bidders?
   Do you advise vendors promptly as to substantial changes in quantities or cancellations with adequate explanation, and keep cancellations and changes in delivery dates at a minimum?
   Do you participate reasonably in outside activities which relate to purchasing policies and procedures?
   Do you accept suggestions and recommendations from principals and teachers, and act upon them favorably, all other factors being equal?
   Do you cooperate in standardization programs, inventory control, etc?
   Do you develop good public relations?
   Do you maintain vendor relations on a practical business basis?

4. Effective Vendor Relations

   Do you make a good first impression and make the salesman welcome?
   Do you conserve the salesman's time?
   Are you sure the salesman understands the problems and requirements?
   Do you give the salesman an opportunity to tell his story?
   Do you guide the interview to develop essential information?
Are you fair and forthright?
Do you respect confidential information?
Do you gain and retain a salesman's confidence?
Do you cultivate legitimate business friendships?
Are you a salesman, too?
Do you follow through on promises and take time to evaluate results?

5. Effective Staff Inter-Relations

Do you consider district-wide needs when establishing purchasing policy?
Do you consider the effectiveness of the purchasing department in relation to:

- Central Administration
- Curriculum
- Business Office
- Local School
- Pupils
- Local School
- Principals
- Local School
- Teachers
- Local School
- Custodians
- Maintenance and Operation?
EDUCATION CODE
SECTION 32060-32066

Arts & Crafts Guidelines

California law (Education Code §32064) prohibits the purchase of art or craft materials containing toxic substances for use by students in grades K-6, and requires that art products purchased for use by students in grades 7-12 are properly labeled to inform users of long-term (chronic) health risks and instructions for safe use. These purchasing requirements apply to schools, school districts, and governing authorities of private schools.

This law also requires the Office of Environmental Health Hazard Assessment (OEHHA) to develop a list of art and craft materials that cannot be purchased for use in grades K-6 (Education Code §32066). This list is a resource to assist schools in complying with the purchasing requirements.

Although not required by law, avoiding art materials that appear on the OEHHA list when purchasing for use by students in grades 7-12 is a good precautionary measure. Teachers and students should carefully read and follow instructions for safe use. Beyond Legal Requirements Regarding Purchasing by Schools Listed products should also be avoided when requesting donations or instructing families on the purchase of art and craft supplies. Donated supplies that are not properly labeled for health hazards (see next section) should be discarded, and supplies that bear health hazard labels should not be directed to K-6th grade classrooms. Schools are encouraged to inventory existing art and craft supplies and remove materials bearing health hazard labels from K-6th grade classrooms. There is another California law (commonly known as Proposition 65) that requires warnings regarding exposures to chemicals known to the state to cause cancer, birth defects, or other reproductive harm. A typical warning says: “This product contains a chemical known to the state of California to cause cancer (or birth defects or other reproductive harm).”

Federal Law and Product Labeling Federal law imposes certain toxicological review and labeling requirements on art and craft materials. The Federal Hazardous Substances Act (Sec. 23 [15 U.S.C. §1277]) requires all art and craft product labels to include information about acute and chronic health hazards and safe handling instructions as applicable, and a statement of conformity to ASTM D-4236, the mandatory art product health labeling guidelines that specify these requirements. This law also prohibits children’s products, including children’s art materials, from containing an accessible hazardous substance. Federal law does not define ‘non-toxic’ and does not prohibit use of this term on art products that do not require cautionary labeling. Some products labeled ‘non-toxic’ can cause harmful effects when used in an unintended manner.

For more information and links:

Every California employer must establish, implement and maintain a written Hazard Communication Program and a copy must be maintained at each workplace or at a central worksite if the employer has non-fixed worksites. The requirements for establishing, implementing and maintaining an effective written hazard communication program are contained in Title 8 of the California Code of Regulations, Section 5194 (T8 CCR 5194) and consist of the following elements:

- Workplace hazardous material inventory
- Material Safety Data Sheets (MSDS)
- Labels and other forms of warning
- Employee information and training
- Hazardous non-routine tasks
- Pipe labeling
- Contractors

For purchasing departments with oversight over a central warehouse and/or a duplication department, it is important to be aware of these requirements. For information on the regulations see the following links:

https://www.dir.ca.gov/title8/5194.html

https://www.dir.ca.gov/dosh/dosh_publications/hazcom.pdf
DISPOSAL OF TEXTBOOKS AND INSTRUCTIONAL MATERIALS

60510. The state board, the governing board of a school district, or a county office of education may dispose of surplus or undistributed obsolete instructional materials in its possession that are usable for educational purposes in any of the following ways:

   a) By donation to a governing board, county free library, or other state institution.
   b) By donation to a public agency or institution of any territory or possession of the United States, or the government of a country that formerly was a territory or possession of the United States.
   c) By donation to a nonprofit charitable organization.
   d) By donation to children or adults in the State of California, or foreign countries for the purpose of increasing the general literacy of the people.
   e) By sale.

60510.1. All of the proceeds of any sale of surplus or undistributed obsolete instructional materials made pursuant to subdivision (e) of Section 60510 shall be available for school districts and county offices of education to acquire basic instructional materials, supplemental instructional materials, or technology-based materials.

60510.5. (a) Prior to the disposition by a school district of any instructional materials pursuant to Section 60510, the school district governing board is encouraged to do both of the following:

   (1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.
   (2) Permit representatives of the entities described in subdivisions (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.  (b) This section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.

60511. Any organization, agency, or institution receiving obsolete instructional materials donated pursuant to this article shall certify to the governing board of the school district or the county board of education, as appropriate, that it agrees to make no charge of any kind to the persons to whom the organization gives or lends those materials.

Disposal Process:

1. Collect all instructional materials/books and box and palletize by subject area.
2. Enter a Work Request to have the materials picked up.
3. The Purchasing Department will handle the auction of the instructional materials
4. Materials that are not usable will be shredded.
NOTICE IS HEREBY GIVEN that the _____________ School District of ___________ County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT intends to sell the following at public auction:

Textbooks and Miscellaneous Instructional Materials

Pursuant to Education Code 60510 et seq., the Governing Board may dispose of surplus and obsolete instructional materials:

a) By donation to a governing board, county free library, or other state institution.
b) By donation to a public agency or institution of any territory or possession of the United States, or the government of a country that formerly was a territory or possession of the United States.
c) By donation to a nonprofit charitable organization.
d) By donation to children or adults in the State of California, or foreign countries for the purpose of increasing the general literacy of the people.
e) By sale.

A list of the books and instructional materials to be sold is available at: ________________ or upon request by calling (XXX) XXX-XXXX.

A public hearing will be conducted at _____ p.m. during the regularly scheduled Governing Board meeting to be held on ______________, at ________________.

Clerk of the Governing Board
______________________________ School District

Publication: Daily Transcript
Advertising dates: ________________
UNION SCHOOL DISTRICT

REQUEST FOR QUOTATION (RFQ)

Suppliers must sign and date this page in the space provided below

### Requester Information

<table>
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<tr>
<th>Department:</th>
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<tr>
<td>Contact Name:</td>
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<td>Telephone #:</td>
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<td>Fax #:</td>
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<td>e-mail:</td>
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### Delivery Address & Instructions

### Item Quantity Unit of Goods & Services Unit Price Total Price

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<th>Item No.</th>
<th>Quantity</th>
<th>Unit of Measurement</th>
<th>Goods &amp; Services Description</th>
<th>Unit Price</th>
<th>Total Price</th>
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### Payment Terms:

Net 30 upon receipt of invoice.

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<th>Total Amount before Taxes</th>
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<tr>
<td>Shipping</td>
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<td>Sales Tax</td>
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Grand Total including

### Quotation Details

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<th>Supplier Name</th>
<th>Supplier Address, Telephone No.</th>
<th>Expected Delivery Time</th>
<th>Quotation #</th>
<th>Quotation Date</th>
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### Comments:

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<th>Email Address</th>
<th>Supplier Contact Name</th>
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Signature
ANY SCHOOL DISTRICT

REQUEST FOR QUOTATION

Submit Response:

Sharon Jones
Director of Purchasing
Ph.: 555-111-2222
Fax: 555-222-3333
sharon.jones@email.net

RESPONSE DUE BY:

2:00 p.m. on __________, 20__

Company Name: ________________________________ Contact: ________________
Address: ________________________________________ Phone #: ________________
Email Address: ________________________________ Fax: ______________________

Purchase Orders must be accepted with payment terms of Net 30. See http://anyschooldistrict.net/purchasing for terms and conditions.

Acceptance: Submission of a response to this RFQ constitutes acceptance of the terms and conditions of this Request for Quotation and purchase orders issued under this RFQ. Quotes may not be withdrawn after the deadline for a period of 30 days. Quantities may be more or less than estimated in quote form. Vendor is to submit best and final price.

Specifications: (type specifications for item/service requested here)

<table>
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<tr>
<th>Est. Qty.</th>
<th>Unit</th>
<th>Description</th>
<th>Price Per Unit</th>
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<tbody>
<tr>
<td></td>
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<td>Be specific on description. Include size, color, dimensions, gauge of steel,</td>
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<td></td>
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<td>Estimated Total</td>
<td></td>
</tr>
</tbody>
</table>

Acknowledgement of terms and conditions:

By ________________________________

Name: ________________________________

NOTE: District terms are Net 30 following receipt of invoice and confirmation of receipt of merchandise.
SOLE SOURCE JUSTIFICATION

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand prior to submitting a requisition to Purchasing. Even though the department's review process prior to the submittal of a requisition may be sound, departments may unknowingly discourage free and open competition by requesting a single vendor or product. Additionally, the district is bound by local and state laws of which faculty and staff may be unaware. The lack of an effective means of communication between Buyer and requesting departments can lead to lost time in completing the acquisition of a product or service. Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definitions.

In an effort to expedite sole source/brand requisition requests through Purchasing, we would encourage you to review the Criteria for Sole Source/Brand form herein. If you feel your request meets such criteria, follow the instructions in filling out the form and attach it to your requisition. If the sole source/brand justification is accepted by Purchasing, the requisition will be processed for the sole source/brand indicated.

This is an internal review process. Departments are requested to use discretion in their discussion with vendors so as not to compromise any competitive advantage the Buyer may utilize, regardless of the acceptance or rejection of the sole source/brand justification.

Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand, and provides you with the method by which to make your requisitioning efforts more efficient under sole source/brand conditions.

Purchasing will advise you when a particular competitive review process may both serve the District better and/or be required by governing law.

If the Purchasing Department confirms a sole source is permissible, the request for sole source/sole brand, the certification, and the form referenced herein should be made a part of your justification. A signature by an authorized department representative is required. This certification will remain on file for audit purposes.

A. PROCEDURE

Sole source/brand purchasing is an exception to the normal procurement function and requires a detailed justification. Sole source is justified in very limited occasions. In processing sole source/sole brand requests for supplies, services and/or equipment, Purchasing adheres to and is governed by the principles set forth in the CA Education Code, Public Contract Code, and by the Board of Trustees. As such, our decision is final.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your requisition. Such a request should not be made unless the request is reasonable and
appropriately justified to meet legal requirements and can withstand a possible audit. The District's requirements and the format for submitting such requests are contained herein. Please make copies of the Criteria for Sole Source/Sole Brand form for your future use.

The following factors DO NOT apply to sole source/sole brand requests and should not be included in your sole source/sole brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and local service (this may be considered an award factor in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors (refer to questions 2 and 3 from the Criteria for Sole Source/Sole Brand form).
5. A request for no substitution submitted without justification. This is a sole source/sole brand request requiring detailed justification including established sole source/sole brand criteria.
CRITERIA FOR SOLE SOURCE

Please address by specific reference each question listed below (1-5) in your justification. Failure to respond to any of the questions could result in a justification on that is inadequate and may result in the rejection of your justification and delay of your request.

1. Why was this product and/or vendor chosen?

2. What are the unique performance factors (functionality) of the product/service specified? Provide detailed specifications and descriptions.

3. Why are these specific factors required?

4. What other products/services have been examined and rejected?

5. Why are other sources providing like goods or services unacceptable? (Full meaningful explanation.)
I HEREBY CERTIFY THAT:

1) I am an approved department representative, and am aware of the District's requirements for competitive bidding, as well as the criteria for justification for sole source/brand purchasing.

2) I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment. Copies are attached.

3) There is validity as to the information contained herein.

4) There is justification for sole source/sole brand purchasing noted above as it meets the District's criteria.

5) A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.

DATED: ______________
DEPARTMENT REPRESENTATIVE

PURCHASING OFFICE USE ONLY:

APPROVED: ________
BUYER: ________

NOT APPROVED: ______
DATE: __________
COMMENTS: ________
ABC UNIFIED SCHOOL DISTRICT
Business Services Division

Regular Governing Board Meeting: [insert date]

SUPPORTS DISTRICT’S GOAL #II.A

Topic:

Adoption of Resolution (#     ) Authorizing the Purchase and Installation of Sports Field Lighting from Musco Lighting as a Sole Source Purchase and Waiving the Competitive Bid Requirement for the Football Field Lighting Project at Santana High School

Issue:

Public Contract Code section 3400 permits public entities to make an exception to the public bidding requirement when the necessary equipment, materials, or supplies are only available from one source.

The District has made a finding that Musco Lighting is unique enough in its function to qualify as a sole source based on the following:

- Energy Efficiency: Lower kW consumption per fixture. Musco's 1500W fixture draws on average 1.564kW. Compared to other fixtures which draw 1.62kW. Musco's advanced technology in fixture optics and housing and their Smart Lamp technology have resulted in more light on the field, and reduced energy consumption per fixture.
- Musco is the only known supplier of the Smart lamp technology. Through timed power adjustments, Smart Lamp allows a constant light guarantee. Light levels are guaranteed to be with +-10% (per IESNA RP-601) through the 5000 hours of the lamp.
- Musco is the only sports lighting manufacturer that employs and trains field technicians to perform fine tune adjustments after installation to ensure maximum performance on-field and off-site. This is part of Musco's performance guarantee that ensures all photometries and components of the system meet the customer's specifications.
- Musco is the only manufacturer that welds all crossarms to the steel pole top section. This provides the highest quality of construction as well as unsurpassed durability. All other manufacturers use bolt-on connections.
- Musco issues a 25-year warranty on their products.

Plan:

Contract with Musco Lighting to provide field lighting and installation at Santana High School without competitive bidding.

Fiscal Impact:

The contract as awarded is for a fixed price of $111,300 and will be funded out of a Fund 21 – General Obligation Bond Fund.
Resolution No. _________
[Insert Date]
Page 2

Recommended Action:
Adoption of Resolution (# ______ ) – Authorizing the Purchase and Installation of Sports Field Lighting from Musco Lighting as a Sole Source Purchase and Waiving the Competitive Bid Requirement for the Football Field Lighting Project at Santana High School

Originating Department:
Purchasing

Submitted/Recommended By: Approved for Submission to the Governing Board:

[INSERT NAME] [INSERT NAME]
Assistant Superintendent, Superintendent
Business Services
RESOLUTION AUTHORIZING PROPRIETARY SPECIFICATIONS FOR MUSCO LIGHTING

WHEREAS, the ABC Unified School District (“District”) desires to contract for the purchase and installation of field lighting for the _________ High School;

WHEREAS, the District has determined that Musco Lighting is unique in its function and designated it as a sole source of field lighting as specified by the District;

WHEREAS, Public Contract Code section 3400 permits public entities to make an exception to the public bidding requirement when the necessary equipment, materials, or supplies are only available from one source; and

WHEREAS, the District has determined that it would be unavailing and no advantage would result if it were to engage in the public bidding process for used office systems furniture meeting the District’s needs, when the District has already researched and concluded that no other products or vendor are available at this time that meet the District's specifications. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631.)

NOW, THEREFORE, BE IT RESOLVED,

1. All of the recitals set forth above are true.
2. The District hereby waives competitive bidding requirements to allow for the purchase of field lighting meeting the District’s needs from a sole source and because public bidding would be unavailing and offer no advantage.
3. The Governing Board hereby authorizes Deputy Superintendent, Business Services, or his designee, to take such action and execute such agreements and documentation necessary to affect the intent of this Resolution.

PASSED AND ADOPTED by the Governing Board of the ABC Unified School District at _________________, California, on this _____ day of __________, ______, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

STATE OF CALIFORNIA )
COUNTY OF SAN DIEGO )

I, _____________, Clerk of the Governing Board of the ABC Unified School District of _________________, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by said Board at the regular meeting thereof at the time and place of vote stated, which resolution is on file and of record in the office of said Board.

_________________________  
Date  
_________________________  
Clerk
Purchasing Process Flowchart

The following is a sample process based on a district’s internal policies and legal code requirements. Amounts may differ among districts.

**General Purchases**
- **<$2,500**
  - Competitive Pricing not Required
  - PO Issued
  - Delegated Authority to Contract Ratification Within 60 Days
- **$2,500 and < Current Bid Limit**
  - Quoting Required
  - Verbal or Written Quotes Purchase Order Issued
  - Delegated Authority to Contract Ratification within 60 Days
- **>Current Bid Limit**
  - Formal Bid or RFP Required
  - Bid/RFP Advertised Documents Issued
  - Formal Board Award Required

**Professional Services**
- **<$5,000**
  - Competitive Pricing not Required
  - PO Issued
  - Delegated Authority to Contract Ratification Within 60 Days
- **$5,000 - $25,000**
  - Informal Proposals Required
  - Proposals Solicited
  - Informal Award Contract/PO Issued
  - Delegated Authority to Contract Ratification Within 60 Days
- **>$25,000**
  - Formal Proposal Required
  - RFP Advertised
  - Formal Board Award Required

**Public Works**
- **>$3,000**
  - Competitive Pricing Not Required
  - PO Issued
  - Delegated Authority to Contract Ratification Within 60 Days
- **$3,000 - $15,000**
  - Informal Quotes Required (Min. of 3)
  - Small Contract Issued / PO Issued
  - Delegated Authority to Contract Ratification Within 60 Days
- **>$15,000**
  - Formal Bid Process Required
  - Bids Vetted and Recommendation is Made for Award
  - Formal Board Award Required
<table>
<thead>
<tr>
<th>Component (Definition)</th>
<th>Bid Limits as of 1/1/2018</th>
</tr>
</thead>
</table>
| **EQUIPMENT, MATERIALS, SUPPLIES**  
20111(a)(1): 20651(a)(1) | $90,200 |
| 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) | |
| **NON-CONSTRUCTION SERVICES**  
20111(a)(2); 20651(a)(2) | $90,200 |
| 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. | |
| **MAINTENANCE**  
20111(3)(2); 20651(a)(3) 20656 | $90,200 |
| 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. | |
| **PUBLIC PROJECT WORK**  
20117 (b), 20651(b) | $15,000  
Labor & Materials |
| Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and any repair work involving publicly owned, leased, or operated facilities. | |
| **FORCE ACCOUNT OR DAY LABOR**  
20114(a). 20655(a) | $45,000 or less  
$45,001 to $175,000  
>$175,000  
350 hours <35,000 ADA  
750 hours or $21,000 if >35,000 ADA or >15,000 FTE for Comm. College |
| 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. | |
| **CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT**  
22032(a)(b)(c) | $10,000 |
| Performed by employees (Force Account), purchase order, or negotiated contract: Let by informal bid: (if all bids exceed $175,000, may award up to $187,500) Formal Bid: | |
| **TRANSPORTATION AGREEMENTS**  
Education Code 39802 | $10,000 |
| 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 | |
| **TIME LIMITS ON CONTINUING CONTRACTS:**  
(Education Code section 17596) | 5 Years  
3 Years  
10 Years |
| Work, all services, apparatus or equipment: |  
Materials or supplies: |  
Equipment Lease: |
Blind Bid Process

For this to work properly, it would be best if the district provided the envelopes for submission of the bid. The person handing out the bid packets needs to be someone other than the person opening the bids.

- Bidders submit their bids in two envelopes. The outside envelope would contain the bid form, the inside envelope would contain the rest of the bid documents (bid bond, non-collusion, etc.). The envelopes should be marked in small letters with corresponding letters or number (e.g. A, B, C, or 1, 2, 3) in order to make sure that no one disputes which two envelopes go with the corresponding bid form.
- At time of bid opening, the District reviews only the bid forms without opening the interior documents.
- The low bids are then ranked either by base bid, or base bid plus alternate 1, base bid plus alternate 1 & 2 or just 2, base bid by alternate 1, 2 &3 or 2 & 3 or 3 and so on. List the bidders by rank, e.g. Bidder B, A, then C.
- Once the District determines which one is the lowest acceptable bid, then the low bidder is announced (Bidder A, B, C…) and the corresponding docs are then opened and reviewed for responsiveness. If that bidder should be non-responsive, then the bidder ranked next would go through that same process.

This is less complicated than it sounds, but this should show you how things could change on close bids:

<table>
<thead>
<tr>
<th></th>
<th>Bidder A</th>
<th>Bidder B</th>
<th>Bidder C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Bid</td>
<td>100,000</td>
<td>99,000</td>
<td>101,000</td>
</tr>
<tr>
<td>Alternate 1</td>
<td>18,900</td>
<td>20,000</td>
<td>17,000</td>
</tr>
<tr>
<td>Option w/Alt. 1</td>
<td>118,900</td>
<td>119,000</td>
<td>118,000</td>
</tr>
<tr>
<td>Alternate 2</td>
<td>7,150</td>
<td>8,250</td>
<td>8,000</td>
</tr>
<tr>
<td>Option w/Alt. 2</td>
<td>107,150</td>
<td>107,250</td>
<td>109,000</td>
</tr>
<tr>
<td>Option w/Alt. 1 &amp; 2</td>
<td>126,050</td>
<td>127,250</td>
<td>126,000</td>
</tr>
</tbody>
</table>
CONTRACTING PROCEDURES
FOR PUBLIC WORKS

Standard Bid Limits:

Public Works: $15,000
Services & Equipment: $90,200 (as of January 1, 2018) - Adjusted annually.

Bid Limits Pursuant to CUPCCAA (if you choose to opt in to the Act):

Informal Quotes: $45,000 (set threshold when quoting is required)
Informal Bids: $45,001 - $175,000. Requires notification to registered vendors OR plan rooms and sealed bids.
Formal Bid: $175,001 and up. (Contracts may be awarded for up to $187,500 when all bids received exceed $175,000 and re-bidding is not feasible.)

Steps to Contracting

1. Identify project (Is it public works, maintenance, or services)
2. Identify budget (site funds, donations, district funds)
3. Contact ______________ to initial bidding and contracting process

Project: Known work at a site that would logically be grouped together, e.g. electrical wiring at a school site encompassing various buildings. In most cases like work would be an indication of logical project grouping, but not always. For example, electrical wiring for temporary housing and electrical wiring for permanent structures might qualify as two projects. Scope needs to be reviewed on a case-by-case basis to determine whether grouping should be required to comply with Public Contract Code.

Public Contract Code 20116 states that it shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding. The total cost of construction (project) includes owner furnished equipment and installation.

Legal Requirements for Contracts:

All contracts for construction above $1,000 are subject to prevailing wages.

Effective July 1, 2017, public works projects of $25,000 or less and maintenance project of $15,000 or less are exempt from the DIR registration and electronic certified payroll reporting requirements.

Public works projects above $175,000 require a formal bid. Bid must be advertised for a period of two weeks with no less than five days in between advertisements. Plan Rooms OR Contractors on the bidder’s list must receive a 15-day Notice of the bid opportunity.

Public works projects above $25,000 require a Payment Bond.

All public works projects, especially those over $45,000 should have a performance bond.
Public works contract documents should include:

- Notice to Proceed (issued after award, execution of contract and receipt of all documents)
- Notice of Award (may be issued prior to Notice to Proceed – usually formal bids only)
- Bid Bond for Sealed Bids (Formal bids only)
- Non-collusion Affidavit
- Certificate of Insurance
- Certificate of Workers’ Compensation
- List of Subcontractors (if applicable)
- Fingerprinting Certification
- Drug & Tobacco Free Certification
- Asbestos Certification
- Lobbying Certification (Projects over $1 million)
- DVBE Documentation (contracts above $10,000 that are funded out of SFB funds.)

**Note:** Federally funded projects including Fund 13 may require additional certifications

**Important Information:**

Project limits are cumulative: e.g., if installing prefabricated equipment requiring site preparation, both the site prep and the equipment install should be added together. If the total exceeds $15K the project should be bid OR each component should be bid separately.

The bid limit for supplies or equipment is cumulative on a contract basis and currently stands at **$90,200.** The limit is adjusted annually for inflation. Furniture or equipment that is like in nature (e.g. science equipment) must either be bid or the District must piggyback on another public agency’s bid to purchase the equipment. Purchases of equipment in which there is installation labor involved that is more than incidental in nature must be bid as public works and the construction bid limits would then apply. The statewide standard is 5% of the cost of the equipment. Many districts allow up to 10%.

**Change orders:**

Under $45K Contracts: Depending on District Policy, may be limited to 10% or allowed up to the $45,000 limit. In no instance, may a change order cause the contract to exceed the $45,000.

Formal Bids: Change orders are limited to 10% of the original contract amount. (PCC 20118.4)

**DIR Regulations:**

Public Works: Contracts greater than $25,000
Maintenance: Contracts greater than $15,000

All bid solicitations, quotes, contracts and purchase orders for public works projects as defined in Labor Code 1720, shall reference the requirements of SB 854 (2014) as follows:

- 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)].

3/1/2018
• 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.

• [To be determined]: 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.)
NOTICE OF COMPLETION & RETENTION PROCEDURES

Notice of Completion: The Notice of Completion can coincide with the release of retention, but its sole purpose is to trigger the period for filing Stop Payment Notices.

Civil Code 8182 stipulates that a "Notice of completion" means a written notice, signed and verified by the owner or his agent, containing all of the following:

(1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8186, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.
(2) If signed by the owner's successor in interest, the name and address of the successor's transferor.
(3) The nature of the interest or estate of the owner.
(4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.
(5) A notice of completion that does not comply with the provisions of this section is not effective.

The notice of completion shall be recorded in the office of the county recorder of the county in which the site is located, **within 15 days after such completion**. A notice of completion in otherwise proper form, verified and containing the information required by this section shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

A stop payment notice is not effective unless given before the expiration of whichever of the following time periods is applicable: (a) If a notice of completion, acceptance, or cessation is recorded, 30 days after that recordation. (b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after cessation or completion. (CC 9356)

Retention: Public Contract Code 7107 stipulates that within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

Definition of Completion:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
(2) The acceptance by the public agency, 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 public agency files for record a notice of cessation or a notice of completion.

In the event that retention payments are not made within the time periods required by this section, the public entity withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the
improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(The above is an excerpt of PCC 7107)

Completion of a work of improvement occurs at the earliest of the following times: (a) Acceptance of the work of improvement by the public entity. (b) Cessation of labor on the work of improvement for a continuous period of 60 days. This subdivision does not apply to a contract awarded under the State Contract Act, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. (CC 9200)
STOP PAYMENT NOTICE PROCEDURE

BACKGROUND INFORMATION

The first step in the STOP PAYMENT NOTICE process is the filing of a PRELIMINARY NOTICE. This notice must be filed by certain subcontractors, laborers on a project. Any time a PRELIMINARY NOTICE is received, it should be forwarded immediately to the Bond Accountant for their control file.

A preliminary notice is a legal document which must be served by most subcontractors and material suppliers and, in certain cases, by direct contractors, in order to record a mechanics lien, serve a stop notice, or make a payment bond claim. Failure to serve a preliminary notice may invalidate your right to pursue these statutory payment remedies. The preliminary covers the period from 20 days prior to the notice to completion of the work. (CC 9300)

A record of the date on which a particular subcontractor begins work or delivery of materials should be kept. Documentation of when a subcontractor begins work will help determine the enforceability of a STOP PAYMENT NOTICE.

STOP PAYMENT NOTICE

On a public construction project, a subcontractor, supplier, laborer, or laborer's trust fund that is not paid by the general contractor or subcontractor may file a document called a STOP PAYMENT NOTICE with the public entity.

Pursuant to Civil Code 9358. (a) The public entity shall, on receipt of a stop payment notice, withhold from the direct 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 funds held in escrow under Section 10263 or 22300 of the Public Contract Code.

It is important that the District handle a STOP PAYMENT NOTICE correctly. If a valid STOP PAYMENT NOTICE is received, and the money is not withheld, the District may have to pay twice -- once to the contractor and once to whoever filed the STOP PAYMENT NOTICE. If the money is withheld when it should not be, the District may violate its contract with the contractor and be liable for damages.

RECEIPT OF STOP PAYMENT NOTICE

When a District employee receives a STOP PAYMENT NOTICE, the department having received the notice should immediately send a copy to the Director of Purchasing for validation and send the original to the Bond Accountant. Any pertinent documentation, such as PRELIMINARY NOTICES, discussed above should be sent to the Bond Accountant with the notice.

If the STOP PAYMENT NOTICE is valid, the Director of Purchasing shall inform the Project Manager, the subcontractor and the contractor, in writing, of the receipt of the STOP PAYMENT
NOTICE. A copy of the correspondence will be sent to Facilities Management and the Bond Accountant.

If a subcontractor pays Ten Dollars ($10.00) to the District prior to completion of the project, the Bond Accountant shall give the filer written notice of the filing of a NOTICE OF COMPLETION on the project within ten (10) days of the filing of a NOTICE OF COMPLETION by the District.

NOTICE OF COMPLETION shall be filed and recorded with the County within ten days of project completion or acceptance.

WITHHOLDING OF FUNDS

Upon receipt of a STOP PAYMENT NOTICE, the total amount withheld in conjunction with the STOP PAYMENT NOTICE should be the amount of the claim plus additional funds sufficient to pay legal fees and interest on the claim. As a general rule, One Hundred Twenty-Five percent (125%) of the claim is appropriate. Amounts withheld pursuant to a STOP PAYMENT NOTICE shall be in addition to any retention withheld from the contractor pursuant to the terms of payment contained in the District's contract with the contractor.
PURCHASING CARD PROGRAM

CARDHOLDER MANUAL
OF
POLICY AND PROCEDURES
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### Form References
- Purchasing Card Agreement Form -- Form PC-01 A
- Purchasing Card Enrollment Form (Application) -- Form PC-02 B
- Purchasing Card Dispute Form -- Form PC-03 C
- Purchasing Card Change Form – Form PC-05 D
- Purchasing Card Missing Receipt Form – Form PC-06 E
- Purchasing Card Cancellation Form – Form PC-07 F
The _________________________ is designated as the Purchasing Card Program Administrator and is authorized to augment purchasing procedures by opening and maintaining credit card accounts for use by the Purchasing Department, and other selected staff members as prescribed by Purchasing Card Procedures. The Purchasing Card Program Administrator will maintain appropriate fiscal controls for all accounts to ensure that public monies are not disbursed in amounts in excess of the budgeted appropriations by the _____________ District. All purchases shall conform to the purchasing Policy and Procedures currently established by the Governing Board.
1.0 PURPOSE:

The Purchasing Card Program (P-Card) has been established by the _________________ District in association with _________________ and _________________ to facilitate the purchase of certain small dollar value items by selected full-time permanent employees (Cardholders) of the _________________ District.

2.0 CARDHOLDER MANUAL OF POLICY AND PROCEDURES:

This Cardholder Manual of Policy and Procedures sets forth the Policy and Procedures for the _________________ District’s Purchasing Card program. It has been developed to provide the Cardholder with information regarding the benefits of P-Cards, the responsibilities that come with the issuance of a P-Card, and the rules that must be followed by the Cardholder. Each Cardholder is required to read and agree to follow the Policy and Procedures contained in this entire document. By completing and signing the Purchasing Card Agreement Form, the Cardholder is acknowledging that he/she has read and understands the Cardholder Manual of Policy and Procedures and agrees to follow them. The Cardholder should keep the Manual for future reference.

3.0 INTRODUCTION:

The _________________ District’s Purchasing Card Program has been established to provide a convenient means with which to make small dollar value purchases and reduce the costs associated with initiating and paying for those purchases. The _________________ is responsible for administering and managing the Program and acting as the main contact for the _________________ District. The _________________ District will issue payment for authorized charges made with the Purchasing Card.

The Cardholder is a _________________ District full-time, permanent employee whose name appears on the Purchasing Card and is accountable for all charges made with that card.

The Department Head is a _________________ District employee(s) within each department responsible for verifying that all charges against the Cardholder’s account are authorized and approved, and that the original documentation for each Cardholder is forwarded to Internal Business Services on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate account numbers. A Department Head may oversee more than one Cardholder account depending on how the Department Head elects to manage its accounts. A department may have more than one Department Head.

The Cardholder is a _________________ District full-time, permanent employee whose name appears on the Purchasing Card and is accountable for all charges made with that card.

The Department Head is a _________________ District employee(s) within each department responsible for verifying that all charges against the Cardholder’s account are authorized and approved, and that the original documentation for each Cardholder is forwarded to
on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate account numbers. A department head may oversee more than one Cardholder account depending on how the department heads elects to manage its accounts. A department may have more than one Department Head.

Each department is responsible for managing its Cardholder accounts. Two areas of responsibility, the Cardholder and the Department Head, have been defined within each department to assist in this management effort. It is important to understand that these areas of responsibility do not necessarily equate to two separate individuals within the department. It is permissible for one individual to be assigned one or more of these responsibilities as defined in these Policy and Procedures. The ultimate decision as to how each of these responsibilities is assigned will be made within each department.

4.0 RECEIVING THE PURCHASING CARD:

4.1 A complete Purchasing Card Agreement Form (see Appendix A) and a Purchasing Card Enrollment Form / Application (see Appendix B) must be submitted for each prospective Cardholder. The Assistant Superintendent of Business Services establishes control limits on a per Cardholder basis. The Department Head will sign the forms and forward them to the Program Administrator. Signature stamps are not allowed.

4.2 Transaction Spending Limit: A per item dollar limitation of purchasing authority will be assigned to the Cardholder for each transaction made with the Purchasing Card. This amount must not exceed the predetermined spending limit. A single transaction/charge may include multiple items but cannot exceed the predetermined spending limit.

4.3 Monthly Spending Limit: A monthly dollar limitation of purchasing authority will be assigned to the Cardholder for the total of all charges made during each monthly billing cycle.

4.4 Additional Control limits will include:
- Dollar limit and Number of times of use per day
- Dollar limit and Number of times of use per month
- Authorized Merchant Category Code
- Prohibited merchant types

Control limits changes may be requested by completing the Purchasing Card Change Form (see Appendix E) indicating the changes desired and submitted to the Purchasing Card Program Administrator for processing. If approved, changes go into effect within 72 hours from the time they are received by MFCU Card Services.

4.5 All prospective Cardholders must read, understand, and sign the Purchasing Card Agreement Form agreeing to follow the Cardholder Policy and Procedures and attend a training session prior to receiving a Purchasing Card. Once the Purchasing Card has been received, the Cardholder will be notified.

4.6 In order to provide a measure of security, the purchasing card requires activation. When the card is received, a sticker prompts the Cardholder to activate the purchasing card. Once activated, the purchasing card is ready for use. Activation is required only once for each purchasing card issued.

5.0 AUTHORIZED CARD USE:

5.1 Cardholders are authorized to use the Purchasing Card to purchase merchandise required as a function of their duties at the District’s. Cardholders may not make purchases for anyone else.
5.2 Certain classifications of products or services designated by Merchant Category Codes (MCC) may be excluded when the card is originally set up. Merchant Category Codes (MCC) are groups of standard industry classification codes, or basically the primary type of business conducted by a supplier. If the Cardholder attempts to use the Purchasing Card at a supplier or merchant that is not authorized, the transaction will be declined.

5.3 Only the Cardholder whose name is embossed on the Purchasing Card is authorized to use the card. The Cardholder is responsible for ensuring that all charges made with the card are in compliance with these Policy and Procedures as well as all District Policy and Procedures.

5.4 The total value of any one charge made with the Purchasing Card may not exceed the single transaction limit stipulated on the Purchasing Card Enrollment / Application Form (see Appendix B).

5.5 The Purchasing Department must be used, instead of a P-Card, if the purchase of item(s) through quotes could save a material dollar value or is required by law.

5.6 No items that are subject to bidding or that are currently under contract may be acquired using a Purchasing Card. If an item is on a bid award, then the bid must be utilized. This list may not be all-inclusive as items may require bidding based on volume of purchase.

- AV Equipment & Supplies
- Bottled Water
- Computer Printer
- Copier
- Custodial Chemical
- Custodial Supplies
- Data Processing Supplies
- Enterprise Computer
- Furniture
- PE Supplies and Equipment,
- Office and School Supplies

5.7 The Purchasing Card must not circumvent the District’s Purchasing and Contracting Policy and Administrative Regulation No. _______ regarding procurement of supplies, equipment and services and the established processes and dollar amounts set in place regarding quotes and bids.

6.0 UNAUTHORIZED AND/OR INAPPROPRIATE CARD USE:

6.1 The Purchasing Card must never be used to purchase items for personal use or for non-District’s purposes even if the Cardholder intends to reimburse the District.

6.2 The Purchasing Card is to be used exclusively by the Cardholder to make authorized purchases at community business establishments. The Purchasing Card should never be used to purchase personal items. The Purchasing Card shall never be loaned to, or used by, anyone other than the Cardholder whose name appears on the face of the card.

6.3 A Cardholder who makes an unauthorized purchase with the Purchasing Card or uses the Purchasing Card in an inappropriate manner will be subject to disciplinary action that can include possible card cancellation and termination of employment. If the purchasing card is inadvertently used for a personal purchase, call the Purchasing Card Program Administrator immediately.
6.4. Failure to comply with the requirements of this Cardholder Manual and District’s Policy and Procedures may result in immediate revocation of purchasing card privileges. This includes, but is not limited to, any of the following:

- Splitting of charges to avoid the single purchase dollar limit. The P-Card Contact reviews detailed transaction reports of exceptions by Cardholders. These reports list purchases that may have been split to avoid dollar control limits.
- Using another Cardholder’s card to circumvent a purchase limit assigned to either Cardholder.
- The Cardholder accepts a personal gratuity from a vendor.
- Loaning the card to another employee or person.
- Allowing purchases to be signed for by anyone other than the Cardholder.
- Failure to submit receipts for charges.
- A personal purchase occurs.
- If the monthly Cardholder statement is submitted to Internal Business Services more than 10 days after the monthly statement date.
- If the attached receipts do not match the item descriptions or dollar amounts listed on the monthly statement of account.

**Unauthorized** purchases, including the following items:

- Items for non-District’s Purposes
- Items or Services for Personal Use
- Any purchases prohibited by any _____________________________ District policy
- Cash Advances
- Gift Cards, Bus Passes, Parking Fees
- Fuel
- Money Orders, Transfer Checks, Cashier’s Checks
- All personal services performed by an individual, including but not limited to presenters, lecturers, interpreters, et al.
- Independent Contractors
- Contracted Services including Consultants / Performance Agreements
- Capital Outlay / Equipment over $500
- Furniture
- Maintenance Service Contracts
- Long Term Rentals
- Extended Product Warranties
- Cell Phones / Pagers
- Food
- Personal Meals
- Alcoholic Beverages
- Gratuities
- Medications
- Memberships / Subscriptions
- Printing / Copying Services
- Postage Services / Stamps
- Food purchases while traveling (use _____________________________ District travel procedures)
- Mileage Reimbursement (use _____________________________ District travel procedures)
- Insurance
- Purchases from a prohibited merchant or excluded category of goods and services
- Student Body Purchases (ASB)
6.5 If reported violations warrant revocation of card privileges, the Purchasing Card Administrator will contact the Cardholder’s Department Head. Information will be provided regarding exceptions to the established policy or requirements that justify the cancellation of the card. A written determination from the Department Head will be obtained and reviewed by the Program Administrator. If a determination is made that a card should be cancelled, the Cardholder will be notified that the card has been cancelled. The Cardholder must destroy the card by cutting it in half and returning both halves to the Program Administrator.

7.0 MAKING A PURCHASE WITH THE PURCHASING CARD:

7.1 Confirm that the selected merchant accepts __________. If not, choose another merchant. In either case, inform the Program Administrator, via the Department Contact, about the fact that the original merchant did not accept __________. If necessary, the Program Administrator will work with the supplier to assist him/her in enrolling in the __________ acceptance program.

7.2 When making purchases, the Cardholder must sign the charge receipt and retain the customer copy. The Cardholder should verify that either the charge receipt or sales receipt complies with the requirements for support documentation set forth in Section 9.0, paragraph 9.1.

7.3 When placing an order with a merchant, ask what the tax rate is and the total tax amount. Make a notation for out-of-state vendors that do not charge sales tax. These sales need to be reported by Accounts Payable to the Franchise Tax Board.

7.4 When making non face-to-face purchases (e.g., via telephone, Internet, mail order, etc.), Cardholders should give the merchant the account number embossed on their card and direct the merchant to include the following on the shipping label and/or packing slip:

- Cardholder name and phone number
- School or department name
- Delivery location – MUST be _____________________________ District address

Ensure the merchant includes this information on all shipping documents.

7.5 Regardless of who receives the shipment, the Cardholder is responsible for obtaining all documentation (packing slips, mail order form copies, etc.) related to the purchase and verifying that the documentation complies with the requirements for support documentation set forth in Section 9.0, paragraph 9.1.

8.0 MERCHANDISE RETURNS AND EXCHANGES:

8.1 The Cardholder is responsible for contacting the merchant when merchandise purchased with the P-Card is not acceptable (incorrect, damaged, defective, etc.) and arranging a return for credit or an exchange.

8.2 If merchandise is returned for credit, the Cardholder is responsible for obtaining a credit receipt from the merchant and retaining that receipt with the support documentation for that purchase. Receiving cash or checks to resolve a credit is prohibited!
8.3 If merchandise is to be exchanged, the Cardholder is responsible for returning the merchandise to the merchant and obtaining a replacement as soon as possible and should be within 30 days. However, the Cardholder is responsible for knowing each merchant’s return policy to ensure returns are timely. Documentation showing the proper resolution of the exchange is to be retained with the support documentation for that purchase.

9.0 RECORD RETENTION:

9.1 Support Documentation consists of an original merchant-produced or non-District’s document that records the relevant details for each item purchased including quantities, a description of what was purchased, the total charge dollar amount and the merchant’s name and address (e.g. sales receipt or original invoice.)

9.2 The Cardholder is responsible for obtaining purchase documentation from the merchant (sales receipt, packing slip, etc.) to support all purchases made with the Purchasing Card and verifying that the documentation complies with the requirements for support documentation set forth in paragraph 9.1. If the receipts are unavailable, the Cardholder must submit a written explanation describing the transaction in detail (Purchasing Card Missing Receipt Form, Appendix F).

9.3 Lost Receipt: If the cash register receipt or the signed credit form is lost, the Cardholder must first attempt to contact the merchant and obtain a copy of the documentation. If that is not possible, the Cardholder must submit a written explanation, entitled “Lost Receipt,” describing the transaction in detail (Purchasing Card Missing Receipt Form, Appendix F.) The Cardholder’s Supervisor must review and sign the written explanation. Please note that Section 6.0, paragraph 6.3 lists failure to turn in receipts as a reason for possible revocation of the Purchasing Card.

9.4 Receipt Not Available: For mail, phone, fax, or Internet purchases in which a receipt is unavailable use a copy of the completed application, flier, or order form as the receipt. Email and fax confirmations of purchases should be obtained when possible. All alternate receipts should clearly indicate the total dollar amount, description of the product or service ordered, cardholder’s name, and that payment was made using the purchasing card (See Purchasing Card Missing Receipt Form, Appendix F).

9.5 In all other instances, if the receipts are unavailable, the cardholder must submit a formal written, signed statement explaining and describing the transaction in detail (See Purchasing Card Missing Receipt Form, Appendix F). The Cardholder’s Supervisor must review and sign the written explanation.

10.0 CARDHOLDER VERIFICATION OF CHARGES:

10.1 Cardholders are accountable for all charges made with their P-Cards and are responsible for checking all transactions against the corresponding support documentation to verify their accuracy and propriety.

10.2 All transactions charged to the Cardholder’s card account up to the end of the monthly billing cycle will be reflected on a printed monthly bank statement. The processor sends this statement directly to the Cardholder on a monthly basis. These transactions must be verified on a monthly basis. During the cycle, Cardholders are responsible for retaining the original copy of all transaction receipts.

10.3 Cardholders are required to review their transactions, using the __________’s online transaction review system, Smart Data Online (SDOL) for accuracy, including transactions, amounts, and default account number codes. This report is available online listing all transactions
charged to the Cardholder’s card account for the month. If an account number for a purchase is incorrect, the Cardholder should reallocate the default account number and replace it with any other District account number that he/she is authorized to access. Once each transaction is properly reviewed and allocated, the Cardholder will check the “Cardholder Reviewed” box, which will “lock” the information into the system. The statement should be printed at the end of the monthly cycle.

10.4 If the Department Head has initialed at the account code line(s) on the Application Form, the Department Head has taken over the responsibility of assigning account numbers to transactions and the Cardholder does not need to assign account numbers to transactions. The Cardholder is still responsible for all other responsibilities in Paragraphs 10.2 and 10.3.

10.5 Original receipts (signed credit card form and cash register receipt or invoices) are required and must be stapled to the monthly statement along with any required written explanations. If a merchant provides only a credit card form, the Cardholder must attach a written explanation describing each item or service purchased. If the cash register receipt or invoice provides no detail or description of the purchase, the Cardholder must contact the merchant to obtain a copy. The monthly statement of account and attached receipts should then be forwarded to the Department Head for approval. Once the Department Head has approved the transactions, the Department Head will forward the statement and receipts to the Purchasing Card Contact in Internal Business Services within 10 days from the date on the statement.

10.6 Keep a record (duplicate copies) of all receipts, written explanations, statements and forms submitted. Each Cardholder is responsible for keeping his/her own documentation and processing the statements for payment. In the absence of the Cardholder, the Supervisor is responsible for processing the payment. Each Cardholder is responsible for informing the Supervisor of the location where the receipts and documentation are kept.

10.7 Purchases will be posted to the Cardholder’s department by Internal Business Services, using the account information listed on the monthly Cardholder’s statement of account.

10.8 Internal Business Services will review each monthly statement and if an exception is identified, the P-Card Contact will notify the Supervisor and Cardholder for correction. The Cardholder’s Department Head and the Purchasing Card Program Administrator will also be notified of the exceptions. Violations noted may lead to or be reason for card revocation.

10.9 If a particular charge or credit does not appear online or on the Monthly Statement, it should be checked against future online transaction information and/or the next Monthly Statement. Do not remove or cross out the item on the current monthly statement or delay processing because of credits or disputes. If the charge or credit does not appear within 10 days after the original charge was made, the Cardholder must notify the P-Card Contact in Internal Business Services.

11.0 CARDHOLDER CHARGE DISPUTE RESOLUTION:

11.1 In the case of a disputed charge, the Cardholder must complete a Purchasing Card Dispute Form (Appendix C) within 30 days of the date noted on the Statement that lists the disputed charge and forward the completed form to the P-Card contact who will initiate the dispute through the Card Services Department.

11.2 If the Cardholder disputes a charge, the nature of the dispute and the final resolution must be documented. This documentation must be retained with the Monthly Statement on which the disputed charge appears.
12.0 DEPARTMENT HEAD VERIFICATION OF CARDHOLDER CHARGES:

12.1 The Department Head is responsible for verifying that all charges against the Cardholder's account are authorized and approved, and that the original documentation for each Cardholder is forwarded to Internal Business Services on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate _____________________________ District general ledger account numbers. A Department Head may oversee more than one Cardholder account depending on how the department elects to manage its accounts. A department may have more than one Department Head.

12.2 The successful use of a P-Card depends on both Cardholders and Department Heads.

12.3 The Department Head must review the Cardholder’s monthly statement, submitted by the Cardholder with receipts, at the end of the payment cycle and on Smart Data Online (SDOL) to ensure that the proper account numbers are charged. Review procedures include the following:

- Ensure there is adequate support documentation
- Ensure that all purchases are an appropriate use of _____________________________ District funds.
- Ensure that the purchasing card is not used to make personal purchases.
- Ensure that only the Cardholder uses the purchasing card.
- Contact the Cardholder to address and correct any questionable purchases/procedures.
- Contact the Purchasing Card Program Administrator immediately if a noted violation requires revocation of the card.

12.4 Approve the statement only after all the above actions have been taken. By signing and approving the monthly statement, the Department Head/ Supervisor certifies the statement’s compliance to the established regulations and acceptance of administrative responsibility for the financial activity.

12.5 Once approved, ensure the Cardholder’s receipts are promptly forwarded to the P-Card Contact. The receipts must be received by Internal Business Services within 10 days from the date of the statement.

12.6 If a particular transaction has not been reviewed within 30 days of the statement date, a reminder will be sent to the Department Head. If after 40 days the transaction is still undesignated, a warning message will be sent, the Program Administrator will contact the Department Head, and the card may be canceled.

12.7 At the end of the fiscal year (June 30), the transactions must be reviewed and charged and settled by July 15. Employees must turn in all documentation and statements with the current year’s budget codes before leaving for the summer.

12.8 If the Cardholder is absent, the Department Head must process the Cardholder’s monthly statement, including the collection of all receipts, and forward to Internal Business Services. Indicate on the statement that the Cardholder was not available for review.

12.9 For there to be a discrepancy associated with a charge, any one or more of the following situations may exist:

- Insufficient transaction information.
- One or more of the criteria for authorized card use set forth in Section 5.0 have not been met.
- The Cardholder disputes the charge (See Section 11.0).
12.10 All discrepancies must be investigated and resolved. The disposition of each discrepancy must be documented and retained with the Support Documentation and/or Monthly Statement. Cardholders are accountable for all discrepancies. The Program Administrator must be notified, in writing, of all discrepancies.

13.0 PURCHASING CARD SECURITY:

13.1 It is the Cardholder's responsibility to safeguard the Purchasing Card and Purchasing Card account number at all times.

13.2 Cardholders must keep their Purchasing Cards in a secure location at all times.

13.3 Cardholders must not allow anyone else to use their Purchasing Cards and/or Purchasing Card account numbers.

13.4 Cardholders must not write their Purchasing Card account numbers where others can easily see them.

14.0 LOST, STOLEN OR DAMAGED PURCHASING CARD:

14.1 If a Purchasing Card is lost, stolen, damaged, or if fraud is suspected, the Cardholder must notify the Mission Federal Credit Union immediately (See Procedure 18.0). Keep a written record of this call, which includes the date, time and name of the person contacted at Mission Federal Credit Union.

14.2 Cardholders must notify the Department Head and the Program Administrator if their cards are lost, stolen, damaged or fraud is suspected within 24 hours after reporting the incident to MFCU Card Services.

14.3 After the above notification procedures have been completed, a new Purchasing Card may be issued to the Cardholder by the Program Administrator.

14.4 If a Purchasing Card is found after it has been reported lost or stolen, it must be destroyed by cutting it in half and returning both halves to the Program Administrator. The same procedure applies if a card is damaged. Both card halves must be forwarded to the Program Administrator. Use Purchasing Card Cancellation Form (Appendix G) to cancel the card.

14.5 Card activity is reviewed periodically and a determination can be made by the Department Head and Purchasing Card Administrator as to whether or not a card should be canceled because of lack of use.

15.0 CARDHOLDER ACCOUNT MAINTENANCE:

Whenever any of the information contained on a Purchasing Card Enrollment Form changes, a Purchasing Card Change Form (Appendix E) must be completed by the Cardholder within 30 days of the change and signed by the Department Head. The completed Purchasing Card Change Form must then be forwarded to the Program Administrator.

16.0 CARDHOLDER TRANSFER WITHIN THE SAN DIEGO OFFICE OF EDUCATION:

Cardholders, who transfer to a new position within the same department and require the use of a Purchasing Card as part of their new duties, must submit a completed Purchasing Card Change Form (Appendix E) within 15 days for authorization to continue to use the same card. Cardholders who no longer require a Purchasing Card in their new position or transfer to a different department
must return their Purchasing Card to the Program Administrator, along with a completed Purchasing Card Change Form *(Appendix E)*. If it is determined that the Cardholder will need a P-Card in his/her new assignment, the Cardholder should follow the same steps described in *Section 4.0* to receive a new P-Card.

**17.0 CARDHOLDER SEPARATION FROM THE DISTRICT’S:**

Prior to separation from the _________________ District for any reason, Cardholders must surrender their Purchasing Card and corresponding support documentation to the Program Administrator in Internal Business Services per the instructions in *Section 14.0*.

**18.0 CONTACT INFORMATION:**

Purchasing Card Program Administrator  or  P-Card Contact

Bank Information:
Lost/Stolen:
APPENDIX

SAMPLE FORMS

Purchasing Card Agreement Form - Form PC-01  A
Purchasing Card Enrollment Form (Application) - Form PC-02  B
Purchasing Card Dispute Form - Form PC-03  C
Purchasing Card Change Form - Form PC-05  D
Purchasing Card Missing Receipt Form - Form PC-06  E
Purchasing Card Cancellation Form – Form PC-07  F

Forms not provided with document. You may request forms from guiselle.carreon@sdcue.net.
WEBSITE DEVELOPMENT

As districts have moved away from brochures and are now publishing on their websites, they have greater flexibility in what can be seen by the public and vendors. Below is a list and sample of some items that you may consider adding:

Mission Statement:

MISSION STATEMENT

- Procure all equipment, supplies, and services, consistent with the quality, quantity, and delivery requirements of the requesting department/site.
- Endeavor to obtain the maximum value for each purchase by utilizing competitive processes and impartial evaluation of alternate products.
- Assist staff by providing product information, locating sources of supply, and explaining procurement options.
- Promote good working relationships with all staff and students seeking procurement assistance, through an understanding of their purpose and objectives.
- Cultivate fair, ethical, and legal trade practices, develop strong vendor relationships and promote public trust in __________ School District.
- Develop and implement operational procedures that provide the highest level of service, while adhering to state and federal regulations, laws, rules, policies, and procedures.
- Provide information and training on the procurement process and seek to improve communication with departments/sites at all times.

Authority to Make Purchases:

AUTHORITY TO PURCHASE

The power of contract invested in the Governing Board is delegated by the Board to the district Superintendent with the following limitations:

1. Such delegation of power shall be a blanket authorization in advance of its exercise and shall be limited to one fiscal year.
2. In purchasing procedures, legal requirements of bidding and the dictates of the best business practice shall be followed.
3. 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 Board; said approval or ratification to be evidenced by a motion of said Board, duly passed, and adopted.
4. All purchases shall be approved or ratified by the Board. Except as Board acceptance of bids is required, ratification of purchase orders shall be made in connection with approval or ratification of warrants.

PURCHASING POLICIES & PROCEDURES

The Purchasing Department is the only District agency authorized to negotiate a legal purchase. Items ordered in any manner other than that established by the department are not an obligation of the __________ School District. A hard copy of a Purchase Order is required.

- Authorized Signatories
  The Superintendent and Deputy Superintendent, Business Services are authorized to sign all manner of contracts. The Assistant Superintendent, Educational Services, Executive Director, School
Facilities, and Executive Director, Information & Technology Services are authorized to sign contracts pertaining to their departments. The Purchasing Director is authorized to sign Purchase Orders.

- **Vendor Contact**
  The District discourages the direct soliciting of schools or staff. Vendors are encouraged to contact the Purchasing Department at: ____________________________

**TERMS & CONDITIONS:**

Vendors are responsible for becoming familiar with all the terms and conditions of the district purchase orders. Terms and Conditions for Purchase orders are available online at the Purchasing Department website at: ____________________________

**BIDS & RFPS**

The District routinely solicits bids for public works projects. The ___SD has opted in to the California Uniform Public Construction Cost Accounting Act allowing it to use the following bid limits:

- $0 - $45,000 Informal Quotes
- $45,001 - $175,000 Informal Bid (registered contractors)
- $175,001 or greater Formal Bid Process

The District will utilize piggybackable bids, the North County Educational Purchasing Consortium, or GSA schedules for purchases in excess of the current statutory bid limit or may solicit bids using the formal competitive process.

Some services are subject to the statutory bid limit.

Information related to Bids and Requests for Proposals is published on the Purchasing Department web page.

Please allow 24 hours following the bid opening for bid results and subcontractor listings to be posted.

**GIFTS**

Employees of ___SD are prohibited from accepting items of monetary value. The employees of the Purchasing Department are subject to FPPC regulations. This policy does not apply to promotional products offered by vendors for the purposes of advertising as long as the products are offered free to all like organizations.

**OTHER**

- Code of Conduct
- Link to Bids
- Link to Contractor Lists
- Link to Prequalification Application
SAMPLE SCHOOL DISTRICT
PURCHASE ORDER TERMS & CONDITIONS

- Ship all merchandise PREPAID to indicated destination. Add freight charges to your bill only if authorized IN WRITING on the purchase order. No C.O.D. charges permitted.

- Enclose packing list showing purchase order number with all deliveries. No charges shall be made for cartons, wrapping, packing, boxing, crating, delivery, drayage or other costs unless expressly authorized on this order.

- Shipments not received by date required may be cancelled by Purchaser without penalty.

- The __________________________ School District is responsible only for the goods or services ordered on the Purchase Order form and signed by an authorized agent of the District. The District is not responsible for orders made without a purchase order.

- All invoices shall have the purchase order number and vendor’s name shown clearly thereon. Labor and materials shall be itemized. All discounts, prices, and amounts shall be clearly shown.

- No changes to this order will be allowed unless authorized by the District’s Purchasing Department.

- Seller shall neither assign any right nor delegate any duty without the prior written consent of the District’s Purchasing Department.

- All delivered goods, services, and charges must be in accordance with the bids or specifications upon which this order is placed. Do not substitute. The District reserves the right to cancel this order or adjust any claim thereunder if merchandise, delivery, services rendered, or charges submitted are not in accordance with the bids or specifications.

- All materials shall conform to the provisions set forth in Federal, State, County and City laws for their production, handling and labeling. When using Federal Funds, vendors and contractors will be required to comply with certification requirements as called for in the Code of Federal Regulations.

- Vendor/Contractor must abide by all Federal, State, County and City laws governing services under the bid, contract, or purchase order upon which this order is placed.

- When a discrepancy exists between the bid price and the order price, the bid price is the legally binding price.

- All items are taxable for State, County & City taxes. The __________________________ School District is exempt from payment of Federal Excise Tax. An exemption certificate will be furnished in lieu of payment of the Excise Tax, and prices listed shall be exclusive of such Excise Tax.

- When applicable, Material Safety Data Sheets (MSDS) must be included with the order. If requested MSDS are not delivered with order, payment will be delayed pending receipt of sheets.

- The __________________________ School District is an equal opportunity employer. The acceptance of this purchase order by a supplier of goods and services is a certification that such supplier is an equal opportunity employer and does not discriminate against any employee or applicant of employment because of race, religion, color, national origin, ancestry, disability, medical condition, marital status or sex as outlined in the California Government Code Section 12940 and all provisions of Executed Order 11246. In addition, the supplier agrees to require like compliance by all subcontractors employed on the work by him.

- Seller/Contractor warrants that all articles furnished shall be free from defects of material and workmanship, that all articles furnished shall be fit and sufficient for the purpose intended, and shall save, keep, bear harmless and fully indemnify the Buyer and any of its officers, employees or agents from all damages, or claims from damages, costs or expenses in law or equity that may arise from Buyer’s normal use.

- The Supplier shall hold harmless and indemnify the District, its officers, agents and employees from every claim, demand, or liability which may be made by reason of: A) Any injury to property or person including death, sustained by the Supplier or by any person, firm or corporation employed by the Supplier directly or indirectly upon or in connection with the service hereunder; however caused; and B) Any injury to property or person, including death, sustained by any firm or corporation, caused by any error, omission, neglect, or torturous act of the Supplier, its officers, agents or employees, upon or in connection with the services hereunder, whether the injury or damage occurs upon or adjacent to the premises whose services hereunder are performed; and C) the Supplier, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings, that may be brought or instituted against the District on any such claim, demand, or liability, and pay or satisfy any judgment that may be rendered against the District, its officers, agents, employees in any such action suit, or other proceedings as a result thereof.

- Public Works including Facility Maintenance Agreements are subject to the regulations established in SB 854 (2014) and SB 96 (2017) for Public Works Projects greater than $25,000 and Maintenance Projects greater than $15,000:
  - 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.
  - [To be determined]: 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.)
PURCHASING RELATED WEBSITES

Contractor's License Information

California States License Board - General Webpage
   http://www.cslb.ca.gov/

General Information
   http://www.cslb.ca.gov/Consumers/Public_Works/

License Classifications
   http://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/

License Check
   https://www2.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx

Consumer Price Index

CPI Index and Database Search
   http://www.bls.gov/cpi/

Department of Industrial Relations

General Information/LCP - CMU/OCIP, etc.
   http://www.dir.ca.gov/

Labor Statistics / Prevailing Wages
   http://www.dir.ca.gov/dlsr/statistics_research.html

Disable Veterans Business Enterprise

Small Business & DVBE Information

Erate & Teleconnect

California Teleconnect
   http://www.cpuc.ca.gov/puc/telco/public+programs/CTF/

High Speed Network K12
   http://www.k12hsn.org/

Universal Services Administrative Company
   http://www.usac.org/default.aspx
Food Service Purchasing

California Department of Agriculture - Diary Pricing
http://www.cdfa.ca.gov/dairy/prices_main.html

Federal Publications Search (CFRs)

School Meals Rules & Regulations - USDA
http://www.fns.usda.gov/cnd/governance/regulations.htm

General Information

Annual Bid Limit
http://www.cde.ca.gov/fg/ac/co/

ASB Accounting Manual
2015 Update

Business Search
http://kepler.sos.ca.gov/cbs.aspx

California Department of Education - Cafeteria Fund Guidance & Regulations
http://www.cde.ca.gov/ls/nu/sn/cafefundguide.asp

California Department of General Services

California Uniform Construction Cost Accounting Commission
http://www.sco.ca.gov/ard_cuccac.html

SDCOE Commercial Warrants Claims Manual
http://www.sdcoe.net/business-services/financial-services/commercial-warrants/Pages/commercial-warrants.aspx

Systems for Award Managed Excluded Parties List (Debarment Listing for Federally Funded Purchases)
https://www.sam.gov/portal/SAM/#content

USDA - Procurement Guidelines
Ins
urance

A.M. Best
http://www3.ambest.com/ratings/entities/search.aspx?

California Insurance Company Profiles
https://interactive.web.insurance.ca.gov/companyprofile/companyprofile


Federal Department of Treasury's Listing of Approved Sureties
https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm

Legal Codes

Bill Tracker
https://legiscan.com/CA

California Bill Information (Register to Track Bills)
http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml

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

Fair Political Practices Commission Regulations
http://www.fppc.ca.gov/index.php?id=37

Fair Political Practices Commission Form 700
https://www.google.com/?gws_rd=ssl&q=fair+political+practices+commission+form+700

Listserv

FCMAT - Purchasing Mailing List
http://fcmat.org/mailinglists/