

**Definitions**

**Budgeter**

A Budgeter is the manager responsible for a particular budget account. Budgeters have authority to sign Purchase Requisitions. A Budgeter does not have authority to obligate the District or a college by entering into contracts or signing Purchase Orders for goods or services except to the extent that the Board of Trustees may have delegated contractual authority by written resolution to the position held by the Budgeter and, even then, the Budgeter may only exercise such delegated contractual authority to the extent allowed by the Budgeter's college or District Administration.

**District Purchasing Services**

This is the central purchasing department for Foothill-De Anza Community College District, Foothill College, and De Anza College. It is administered by the Director of Purchasing Services who reports to the District's Vice Chancellor for Business Services. Purchasing Services Buyers and Senior Buyers solicit competitive bids and award purchase orders.

**Purchase Order**

A Purchase Order is a document created by District Purchasing Services after it receives a requisition, conducts necessary bidding, and selects a vendor. District Purchasing Services creates Purchase Orders online in the District's Finance Module (currently, Sungard Banner). A Purchase Order is a contract to purchase goods or services from a vendor. When District Purchasing creates the Purchase Order it establishes an encumbrance against the accounts listed on the requisition. The encumbered funds will be used to pay for the purchase after it is received and invoiced.

**Purchase Requisition**

A Purchase Requisition is a purchase request form that is completed by the requestor online in the Finance Module and sent to District Purchasing Services so that District Purchasing Services can obtain bids, select a vendor, and award a purchase order in accordance with applicable laws and policies. A Purchase Requisition must describe the needed item in terms of required quantity, quality, features, and functions, and it must indicate the desired delivery date. It also lists the accounts that will pay for the requested items, and it must be approved online in the Finance Module by the approvers for the designated accounts (known as "foaps") before it is sent to District Purchasing Services.

## **Overview of Legal, Ethical, and Policy Requirements**

### **Overview of Applicable Laws and Policies**

The State of California Education Code, Sections 81655 and 81656, empowers the Board of Trustees to enter into contracts on behalf of the District and to delegate such contractual authority to one or more District officers or employees by resolution of the Board. The Foothill-De Anza Community College District's Board Policies 3140 and 3143 and the District's Administrative Procedures AP3140 and AP3143 have been written to comply with Education Code Sections 81655 and 81656 as well as with public bidding requirements mandated by Public Contract Code Section 20651, conflict of interest regulations mandated by Government Code Sections 1090 and 1126, and applicable Internal Revenue Service regulations. Board policies 3140 and 3143 require that all contracts and purchasing transactions shall be in writing. Please refer to the most current version of the California Association of School Business Officials (CASBO) *Purchasing Agents Reference Guide to Legal Codes* for a complete listing of applicable laws.

### **Legal and Ethical Requirements**

#### **Purchasing Authority and Responsibility**

The District's Purchasing Services Department is the central purchasing authority for Foothill-De Anza Community College District. In addition, purchases may also be made directly by certain other college or District officials if the Board of Trustees has expressly delegated purchasing authority to such officials by resolution, and if such officials take full responsibility for their purchase transactions including the receiving function. It is not the role of the District's Purchasing Services Department to approve or troubleshoot a purchase after others have made the purchase. Additionally, District Shipping & Receiving only receives deliveries of purchases that are made pursuant to District Purchase Orders.

Current Board Resolutions regarding purchasing authority (Purchasing Authority Grid) are posted at <http://purchasing.fhda.edu/policies>.

#### **Requirement to File Statements of Economic Interest**

District and campus employees, officials, or consultants who substantially influence the award of contracts, exercise contractual authority, or otherwise make or assist in making decisions that may have a material effect on the financial interests of the District or colleges are required to file an annual Statement of Economic Interests Form 730 in accordance with Board of Trustees policy and the California Code of Regulations, Title 2, Section 18730.

### **Required Compliance with Conflict of Interest Regulations**

Government Code sections 1090-1099 prohibit any employee or officer from having any financial interest in any contract made by them in their official capacity or by any board or body of which they are members; this applies to personal financial interest and that of family members. It also prohibits employees or officers from being “purchasers at any sale or vendors at any purchase made by them in their official capacity.” Furthermore, it is a crime for a public employee to influence the award of a contract in which he or she has an economic interest.

Government Code Section 1126 prohibits any employee or officer from engaging in any activity for compensation which is “inconsistent, incompatible, in conflict with or inimical to” his or her duties as an employee or officer or with the duties, functions or responsibilities of his or her employer.

For legal and ethical reasons and to avoid actual or apparent conflict of interest, District and campus employees or officers who substantially influence the award of contracts or who exercise contractual authority must avoid the acceptance of gifts, gratuities, offers of employment, commissions, fees, travel, or other personal economic gain from vendors or contractors who want or have a buyer-seller relationship with the District or its colleges.

### **Required Records and Audit**

Regardless of whether Purchasing Services or another authorized official makes the purchase, all purchases must be in writing and shall be reviewed by the Board within 60 days or as otherwise provided by law. The records must document compliance with this Board administrative procedure and all other applicable Federal, State, and Local laws as well as District policies. Any official who exercises purchasing authority is required to maintain his or her own written records of all Budgeter purchase requests, vendor quotations, contracts or order documents, and receiving reports for a minimum of three years after completion of the purchase or contract, and such records are subject to audit. Additionally, to facilitate the Accounts Payable process, purchase documents must be sequentially numbered and vendors must be instructed to show the appropriate purchase document number on related invoices.

### **Requirement to Solicit Bids**

The bid limit for the purchase of materials, supplies, and services to be furnished, sold, or leased is established by the State of California Public Contract Code § 20651. The limit is subject to change on January 1 of each year. There are two distinct bid limits: **(1) Public Projects** (i.e., contracts with the licensed trades to perform construction, reconstruction, erection, alteration, renovation, improvement, demolition, landscaping, voice or data cabling, painting, or repair work involving any publicly owned, leased, or operated facility) have a bid limit of \$15,000 as of January 1, 2011; **(2) Materials, Supplies, and Miscellaneous Maintenance Services** have a bid limit of \$78,900 as of

January 1, 2011. **Exemption:** Certain professional services or advice and insurance services are exempt from bidding requirements.

The amount subject to the bid limit requirements is the **total contract value** over the term of a written agreement including all costs for all years including all applicable taxes, shipping fees, and other associated charges. If the **total contract value** is below the applicable bid limit then the product or service may be purchased without the conducting an advertised formal competitive bid process. However, the purchase may be subject to a District requirement to obtain informal bids or quotations when the purchase cost is less than the statutory bid limit (see procedures below). Informal bidding promotes free and open competition among sellers for public dollars and can substantially reduce acquisition cost for the needed goods or services.

### **Services Currently or Customarily Performed by Classified District Employees**

Education Code Section 88003.1 establishes standards for the use of contractors to provide services that are currently or customarily performed by classified District employees

### **Limits on Contract Duration**

Pursuant to Education Code Section 81644, contracts for services or equipment shall not exceed five years duration and contracts for materials or supplies shall not exceed three years duration.

## **Policy Requirements**

### **Exception to Purchasing Delegations: Capital Equipment**

Capital equipment with a life of one year or more and a cost of \$5,000 or more must be purchased pursuant to Administrative Procedure 3140 by the District Purchasing Services Department. Capital equipment must be tagged with a District Property Control Number and entered into the District's capital equipment inventory records immediately upon receipt.

### **Requirement to Purchase Standard Computer Equipment**

Computer equipment purchases must comply with District-wide standards established by the Vice Chancellor for Educational Technology Services.

### **Contracts for Application of Toxic Chemicals**

Contracts for the application of toxic chemicals such as pesticides or herbicides must be reviewed and approved by the Associate Director of Facilities and Operations (x6153) prior to execution.

**All purchase transactions and contracts must be in writing**

Board policy 3140 requires that all contracts and purchasing transactions shall be in writing.

**All purchase transactions and contracts shall be reviewed by the Board of Trustees**

Board policy 3140 requires that all contracts and purchasing transactions shall be reviewed by the Board within 60 days or as otherwise provided by law.

**Vendor Selection and Purchasing Procedures**

**Introduction**

Choose one of the following procedures based upon the nature of the anticipated purchase. Choose the procedure under Section I if requesting equipment, materials, supplies, or maintenance services. Choose the procedure under Section II if requesting independent contractor services, professional services, or insurance services. Choose the procedure under Section III if requesting construction, reconstruction, erection, alteration, renovation, improvement, demolition, painting, voice/data cabling, or any type of repair work involving a publicly owned, leased, or operated facility.

**Section I. Equipment, Materials, Supplies, and Maintenance Services**

This section is applicable to the purchase or lease of equipment, materials, supplies and services including maintenance services as defined in Public Contract Code Section 20656 as “routine, recurring, and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered or repaired.” It is not applicable for the purchase of construction, public projects, insurance services, and professional services.

The requestor must complete a requisition in the Finance Module and it must be approved in the Finance Module by the designated approvers. After it is approved, the Finance Module electronically delivers the requisition to District Purchasing Services. Expenditures that exceed the statutory bid limits (**\$78,900 as of 1/01/11**) cannot be made until formal bids are obtained by District Purchasing Services and presented to the Board of Trustees with a recommendation for contract award. Requestors should allow up to **3-6 MONTHS** or longer for District Purchasing Services to issue a purchase order under these circumstances. District Purchasing Services will collaborate with the requestor to establish a schedule (a bid calendar) for bidding the acquisition.

Certain items are specifically exempt from bid requirements. Perishable food stuffs and seasonal commodities needed in the operation of cafeterias and food services are exempt from bidding under Public Contract Code Section 20660. Supplementary textbooks, library books, and educational films, audiovisual materials, test materials, workbooks,

instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the District may be purchased without taking estimates or advertising for bids. However, even purchase transactions that are exempt from bid requirements must, nevertheless, be approved by the Board of Trustees if their cost will exceed the current bid limit as established by California Public Contract Code §20651 (\$78,900 as of 1/01/11).

**Under this section, the following additional competitive bidding practices are required as a matter of board policy:**

- A. **Expenditures of \$0 to \$10,000** require at least one documented verbal or written price quotation obtained by an authorized budgeter of the account(s) to be charged or by Purchasing Services. The quotations and other applicable pricing information should be sent to Purchasing Services along with an approved Purchase Requisition. If the Purchase Requisition is submitted without a valid quotation, Purchasing Services will solicit quotations based upon the item descriptions on the Purchase Requisition.
  
- B. **Expenditures from \$10,001 to the Public Contract Code §20651 bid limit (\$78,900 as of 1/01/11)** require at least three written price quotations obtained by District Purchasing Services. The Budgeter authorized to requisition such expenditure will supply applicable specifications with an approved Purchase Requisition to District Purchasing Services. Purchasing Services shall use the information to issue a Request for Quotations (RFQ). The RFQ will be posted online if practicable. Requestors should allow up to 3-6 **WEEKS** or longer after the requisition is approved in the Finance Module for District Purchasing Services to issue a purchase order.

**Section II. Independent Contracts Including Professional Services and Insurance Services**

Any contract to purchase the services of a person, business, or corporation who is not an employee of the District or the colleges is an independent contract. Only the District's Department of Facilities, Maintenance, & Construction Management may use independent contracts to hire contractors to perform facility construction, modification, renovation, demolition, or repair and the dollar amount of such independent contracts cannot exceed \$14,999. Independent contracts shall not be used to purchase products or services that are subject to the competitive bid requirements of the Education Code or the Public Contract Code. For example, independent contracts shall not be used to purchase software or other products regardless of the dollar amount. Furthermore, independent contracts shall not be used to purchase equipment repair or maintenance services that exceed the current statutory bid limit of \$78,900 (1-01-11).

- A. Summary of Requirements

*Foothill-De Anza Community College District  
Administrative Procedures*

1. Officials with Board delegated purchasing authority pursuant to **Education Code 81656** are authorized to enter into contracts with independent contractors up to the amount of their delegated authority but not to exceed \$20,000.

**NOTE:** Refer to Board Policy 3143 and Board Administrative Policy 3143 regarding contracts with costs in excess of this statutory amount. Current Board Resolutions regarding purchasing authority (Purchasing Authority Grid) are posted at <http://purchasing.fhda.edu/policies>.

2. All contracts must be written in a format approved by District Business Services and the contractor must supply a completed IRS Form W-9.
3. Contracts for the application of toxic chemicals such as pesticides or herbicides must be reviewed and approved by the District Director of Environmental Health and Safety prior to execution.

**B. Procedures for Independent Contracts if Contract Amount is \$20,000 or Less**

1. Complete the 2-page Independent Contract Form which is available at our website, <http://purchasing.fhda.edu> (Foothill-De Anza Community College District). Ensure that all fields of the form are filled with clear and precise information including description of services, beginning and ending dates of the contract, fee schedule, and maximum total cost.
2. Before services begin, obtain contractor signature on the Independent Contract Form and obtain an IRS Form W-9 from the contractor.
3. Before services begin, obtain signature of your authorized campus or district representative.
4. If more than one payment will be made to contractor, see Step C below.
5. Payment instructions: After services are satisfactorily completed, submit the vendor's invoice, the completed and signed 2-page Independent Contract Form from step 1 above, and the W-9 to District Accounts Payable. Make sure that the invoice has been signed by the responsible Budgeter as "approved for payment" and that it shows the account code(s) to be charged, and a description of the work including date(s) performed. The invoiced amount cannot exceed the contract amount.
6. Changes to the contract dates, scope of work, dollar amount or other terms and conditions must be in the form of written contract amendments, sequentially numbered, dated, and signed by both the contractor and the authorized District representative who originally entered into the contract.

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- If the amendment increases the cost of the contract, it must clearly explain the reason for the cost increase.
- The total amount of the contract including all amendments cannot exceed \$20,000.

- C. Recommended additional step following B4 above in order to facilitate and track payments if the Contractor will be paid two or more times for the contractual services.

If used, the steps below replace B5 payment instructions. If not used, a copy of the independent contract must be sent to Accounts Payable with each request for payment.

1. After the form of contract has been generated and signed by the contractor and a authorized campus or district representative pursuant to B above, submit a Requisition in the Finance Module along with the completed signed Contract form and IRS Form W-9 to District Purchasing Services. Purchasing Services will issue a Purchase Order to facilitate payments for the services and will send a copy of the Purchase Order to the requestor, the contractor, and District Accounts Payable. Contractor should indicate the District's Purchase Order number on all invoices.
2. After the invoiced services associated with that payment are satisfactorily completed, submit each vendor invoice to District Accounts Payable. Make sure that the invoice has been signed by the responsible Budgeter as "approved for payment," that it indicates the correct Purchase Order number, and that it includes a description of the work billed including the date(s) performed. The total of all invoices cannot exceed the contract amount.
3. To request a Purchase Order revision consistent with a contract amendment, submit the properly authorized signed amendment along with a Purchase Requisition to District Purchasing Services and reference the contract's existing Purchase Order Number.

- D. If the Contract Amount Will Exceed \$20,000

Refer to Board Policy 3143 and Board Administrative Policy 3143 for requirements. Any contract in excess of \$20,000 must be presented to the Board of Trustees for approval prior to contract commencement unless the contract has been authorized by the Chancellor or the Vice Chancellor of Business Services prior to contract commencement as well as ratified by the Board of Trustees within 60 days thereafter.

### **Section III. Public Projects**

California Public Contract Code §22002 defines “Public Project” as construction, reconstruction, erection, alteration, renovation, improvement, demolition, painting, and repair work involving any publicly owned, leased, or operated facility. **The installation of voice or data cabling is defined as a public project.** Public Project contractors must pay prevailing wages to their workers in accordance with California Labor Code (sections 1720-1815) and the California Code of Regulations, Title 8.

- A. Public Projects require Plant Services review, approval and project coordination.
- B. The requestor must complete a requisition in the Finance Module and it must be approved in the Finance Module by the designated approvers. After it is approved, the Finance Module delivers the requisition electronically to District Purchasing Services. Expenditures that exceed the statutory bid limits (**\$14,999 as of 1/01/11**) cannot be made until formal bids are obtained by District Purchasing Services and presented to the Board of Trustees with a recommendation for contract award. Requestors should allow up to 3-6 **MONTHS** or longer for District Purchasing Services to issue a purchase order under these circumstances. District Purchasing Services will collaborate with the requestor to establish a schedule (a bid calendar) for bidding the acquisition..
- C. The following competitive selection processes are required:
  1. Expenditures with a total cost of \$0 to \$1,000 require at least one price quotation obtained from a licensed contractor by Plant Services staff in conjunction with specifications prepared by Division/Department manager. In accordance with Public Contract Code section 20657, all contractors included on the District’s informal bidding list shall be given notice of all requests for quotations in any manner as the District deems appropriate.
  2. Expenditures with a total cost of \$1,001 to \$14,999 require that Plant Services staff invite at least three licensed contractors to submit written price quotations using public project quotation forms provided by District Purchasing Services. In accordance with Public Contract Code section 20657, all contractors included on the District’s informal bidding list shall be given notice of all requests for quotations in any manner as the District deems appropriate.
  3. Expenditures with a total cost of \$15,000 and more require formal bids obtained by District Purchasing Services staff using specifications prepared by Plant Services staff and the requesting staff or Division/Department manager. It may take 2-4 months to issue a purchase order under these circumstances. District Purchasing Services staff will work with the requestor to establish a schedule (a bid calendar) for bidding the project.

See Public Contract Code sections 20651-20660 and 22002  
Education Code sections 81641-81656  
Government Code sections 1090 and 1126  
Labor Code sections 1720-1815  
California Code of Regulations, Title 8

**Section IV. Other Acquisition Methods**

Several options are available to the end user to purchase materials or supplies when the cost is less than the regulated limits listed above. Please refer to the current “Quick Reference Guide” which is posted on the District Purchasing Services website at <http://purchasing.fhda.edu>.

*See Board Policy 3140*

Reviewed 8/16/99  
Updated 5/28/02, 1/1/04, 12/6/04, 3/17/06, 12/1/11  
Reviewed by Chancellor’s Advisory Council 4/27/07