

Overview of Legal 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. Refer to the most current version of the California Association of School Business Officials (CASBO) Purchasing Agents Guide to Legal Codes for a complete listing of applicable laws.

Legal and Ethical Requirements

Board of Trustees Delegations of Contractual Authority

Contracts may be signed by certain college or District officials if the Board of Trustees has expressly delegated contractual authority to such officials by written resolution. An official with the right to exercise delegated authority pursuant to Education Code 81655 can choose to sign contracts in advance of Board authorization. However, the official is responsible to ensure that the contract complies with the delegation and all applicable laws and that it is submitted to the Board of Trustees for ratification within 60 days after the official signs it. The delegation of authority pursuant to Education Code 81655 shall not be used to enter into any contract that is subject to the competitive bid requirements of the Education Code and the Public Contract Code. Education Code Section 81655 requires the District's Board of Trustees to approve or ratify all contracts regardless of price in order to establish their legal validity.

Statutory Requirement for Board Approval or Ratification

In order to comply with Education Code Section 81655, contracts let pursuant to Board Policy 3143 and Administrative Procedure 3143 shall be valid and constitute an enforceable obligation against the District only when they have been approved or ratified by the Board of Trustees by a formal action of said Board duly passed and adopted by majority vote. Contracts shall be presented for adoption or ratification by the Board within sixty (60) days after execution.

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.

Competitive Bidding Requirements

The delegation by the Board of Trustees of the authority to contract pursuant to Board Policy 3143, Education Code Section 81655, and this Administrative Procedure 3143 requires compliance with all applicable laws that require contracts to be let through a competitive process. The required competitive bidding processes are the same as those required by Board Policy 3140 and Board Administrative Procedure 3140. Please refer to Administrative Procedure 3140 and the applicable state codes for details about competitive bidding requirements.

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 1090 prohibits 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 under Government Code 1090 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 have or want to have a buyer-seller relationship with the District or its colleges.

Statutory Limits on Contract Duration

Contract duration shall not exceed three years for materials or supplies or five years for equipment, work, or services per Education Code section 81644.

Required Records and Audit

All contracts must be in writing and shall be approved or ratified 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 contractual 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. Contractors must send invoices to the person who authorized the contract so that the invoices can be reviewed and approved prior to payment by District Accounts Payable.

Policy Requirements

Form of Contract

All contracts must be written in a format approved by District Business Services. The signature block on a contract form signed pursuant to delegated authority under Education Code Section 81655 must state: "SIGNED IN ADVANCE OF, BUT VALIDITY OF CONTRACT DEPENDENT UPON, FORMAL APPROVAL BY GOVERNING BOARD PER EDUCATION CODE SECTION 81655."

Contractor Must Submit IRS Form W-9

The contractor must supply a completed IRS Form W-9 before the contract is signed.

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 Computers

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

Review by Fire/Life Safety and Hazardous Materials Coordinator 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.

Procedures for 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.

A. Procedure

1. Submit the completed Independent Contract or other District-approved Agreement for Services form to the Board of Trustees for authorization before the contract services begin **OR** submit the contract to the Board of Trustees within 60 days after an official

with delegated Board authority under Education Code 81655 signed the contract. Indicate the date of Board of Trustees approval on the contract form.

2. Obtain contractor signature on the Board authorized Contract and obtain an IRS Form W-9 from the contractor.
3. Obtain signature of your authorized campus or district representative.
4. If more than one payment will be made to the contractor, see step B 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. Contract Amendments: Changes to the contract dates, scope of work, dollar amount or other terms and conditions must be in the form of written amendments, sequentially numbered, dated, and signed by both the contractor and an authorized District representative.
 - If the amendment increases the cost of the contract, it must clearly explain the reason for the cost increase.
 - Board Approval or Ratification of Contract Amendments: If the contract scope is changed or if the total dollar amount of an amended contract, including cumulative contract changes or amendments, will exceed the original dollar amount authorized by the Board of Trustees by more than 10 percent, Board authorization of the increased contract amount is required. It is the responsibility of the requesting Division/Department manager or college president to submit contracts and contract changes to the Chancellor's office for placement on a board agenda.

B. Recommended additional step following A3 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 A5 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 created, approved or ratified by the Board of Trustees, and signed by the contractor and a authorized campus or district representative pursuant to A above, submit a Purchase Requisition in the Finance Module (currently, Sungard Banner) along with the completed signed Contract form and IRS Form W-9 to District Purchasing Services. The

Purchase Requisition must state the date that the Board of Trustees approved or ratified the contract. 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 services associated with the payment are satisfactorily completed, submit each vendor invoice to District Accounts Payable. Ensure 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 invoiced amount cannot exceed the contract amount.
3. Request for Purchase Order Revisions:
Requestors must submit a completed and properly signed contract amendment (see #6 above) to Purchasing Services along with an approved Purchase Requisition that references the contract's existing Purchase Order number. This must be done before the Purchase Order has been closed in the Finance Module.

See Education Code sections 81641-81656 and 88003.1; Public Contract Code sections 20651-20660; and Government Code sections 1090 and 1126

See Board Policy 3143

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