

# Purchasing 101/201

## P101



## CASBO REGIONAL WORKSHOPS

**Twin Rivers COE, September 4, 2014**

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This handout has been prepared by the CASBO San Diego – Imperial Section Purchasing Professional Council and has not been reviewed for approval by the State CASBO Committee and is not an official statement of CASBO.

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## ACKNOWLEDGEMENTS

Over the last few years, the development of this manual has been a result of the work of a long list of purchasing and legal experts and volunteers. Countless hours of research and compiling of information are included in this effort.

A few years back CASBO considered adding Purchasing 101 to their annual roadshow. At that time, Sharon Ketcherside was leading the State R & D Committee for Purchasing and a brief outline was developed. In 2008, I borrowed the outline and along with two colleagues and an attorney (named below) began to compile the handbooks. Some of the material was borrowed from other Councils. We believe this handbook contains some very relevant information that will be of assistance to new and seasoned purchasing staff and hope you will find it valuable.

Following is a list of contributors of time and information to this handbook:

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Thank you to all,

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# **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.)

### **PHILOSOPHY**

#### **How it can help you and your district?**

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. Appraise 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.
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.
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 maintain a file of current trade catalogs which shall be available to all schools and departments.
6. 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.
7. 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.
9. 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 under the following conditions:
  - a) The contract is between the School District and the employee.
  - b) 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.
  - c) 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. There should be a growing recognition of the integral interdependence between the classroom teacher, principal and the various central administrative departments with the Purchasing Department.
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 a hearing relative to their products the first time they call. Subsequent visits shall be promptly acknowledged and interviews granted or not, depending upon the circumstances. Purchasing personnel are not required to put their time absolutely and indiscriminately at the disposal of all salesmen, however frequent, or on whatever mission, they may be calling. The responsible Purchasing personnel must be the judge, but they are not relieved for the obligation of courtesy.
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.
5. Visiting the suppliers at their places of business shall be a regular part of purchasing practice.

#### **E. PURCHASING PROCEDURES (Board of Education Approval)**

1. A list of all Purchase Orders written will be presented to the Board of Education for approval prior to mailing to vendors. Where the holding of a Purchase order would unreasonably obstruct necessary work, or seriously hinder the instructional program, Purchase Orders may be issued for Board ratification at the next Board meeting.

#### **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) wherever practical or required by law. Perishable and seasonable commodities such as milk, ice cream, meat, vegetables, bread and other foodstuffs affecting the health and safety of the children are not required to be competitive bid and any orders for these products shall be subject to cancellation at any time.
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 to copy study. They shall not, however, be removed from the Purchasing Office.
9. Awards shall be made to the lowest responsible bidder meeting specifications. In the event of tie bids, the following procedures shall be followed:
  - a) In case of single item bids, the award shall be made to the local vendor, if any, or shall be made to the vendor who has offered the most consistent service and reliability in the past.
  - b) In case of multiple item bids where all items are tie bids, the procedure shall be the same as in a) above.
  - c) In the case of multiple item bids where only part of the items are tie bids, the award of all tie bids shall be made to the local vendor, if any, or to the vendor who has done the best on the bid as a whole.
  - d) In making all awards, discount terms for payment within a reasonable number of days shall be considered a part of the bid.
10. A summary of all bids over \$15,000.00 for work to be done and \$84,100 (updated for 2014) for materials or supplies, showing the recommendations of the Purchasing Department shall be submitted to the Board for approval.

## **H. BID PROCEDURES**

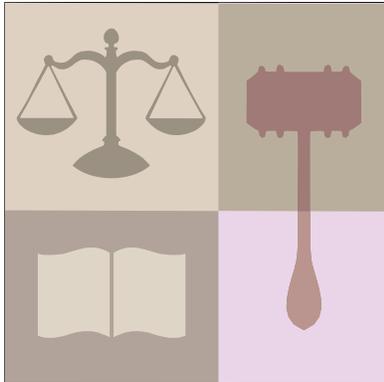
1. The District will act in accordance with Public Code 20111 which reads: "The Governing Board shall let any contracts involving an expenditure of more than fifteen thousand dollars (\$15,000) for work to be done or more than fifty thousand dollars (\$50,000) [this is updated annually by the Superintendent of Schools, the current rate is **\$84,100**] 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 \$84,100.00, the determination as to whether or not to have written or telephone bids shall be left to the discretion of the Purchasing Department, which shall consider the five fundamental purchasing functions listed in paragraph 2 of “Board Relations” Section before making its decision.
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:

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

# LEGAL ISSUES IN SCHOOL PURCHASING

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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.

## **BIDS: GOING ONCE, GOING TWICE, GONE!**

### ***ISSUE: WHICH BID LIMIT TO USE – CURRENT YEAR THRESHOLD FOR EQUIPMENT (\$84,100 FOR 2014), 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 (\$84,100 for 2014) 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 \$83,000 annually.

If you suspect the annual 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

### ***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 (\$84,100 for 2014). 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 resell 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 RECOURSE 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 Majeure" 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.?

Yes/No

- \_\_\_\_\_ 15. Is it legally required to place all vendors on bidding lists when requested?
- \_\_\_\_\_ 16. Can a lease/lease purchase agreement be written beyond a 10 year period?
- \_\_\_\_\_ 17. Is a dual specification legally acceptable?
- \_\_\_\_\_ 18. Should all bid documents for a district incorporate the clause:  
"The Board reserves the right to reject or accept any or all bids"?
- \_\_\_\_\_ 19. Legally, do you have to give preference to small and minority businesses?
- \_\_\_\_\_ 20. Can you go to trial for photocopying a copyright protected textbook?

## QUIZ YOURSELF

### MATCHING SCHOOL DISTRICT LEGAL CODES

- |  |          |   |
|--|----------|---|
| 1. K-12 P.C.C. 20112<br>College Education Code 81641         | A. _____ | \$15,000.00 work-to-be-done<br>\$50,000.00 supplies & equip. (Univ.)<br>\$50,000.00 supplies & equip. (College) |
| 2. K-12 P.C.C. 20111<br>College P.C.C. 20651                 | B. _____ | Accept securities equivalent to any<br>amounts withheld to ensure performance                                   |
| 3. K-12 Education Code 39521<br>College Education Code 81452 | C. _____ | Publish once-a-week for two weeks,<br>open bids third week.<br>(Notice calling for bids).                       |
| 4. K-12 P.C.C. 20116<br>College P.C.C. 20657                 | D. _____ | Exempt from bidding (Computer<br>Software, textbooks, etc.)   |
| 5. K-12 P.C.C. 20113<br>College P.C.C. 20654                 | E. _____ | Emergency repairs, alterations, etc.<br>without bidding.  |
| 6. K-12 Education Code 38083                                 | F. _____ | Exempt from bidding (Special Services)<br>(Auditing/Engineering, etc.).   |
| 7. K-12 P.C.C. 20118.3<br>College Education Code 81651       | G. _____ | Property more than \$2,500.00<br>(Surplus Sale)   |
| 8. G.C. 53060  | H. _____ | Unlawful to split bids.   |
| 9. K-12 P.C.C. 20118<br>College P.C.C. 20652                 | I. _____ | Exempt from bidding (Foodstuffs).   |
| 10. P.C.C. 22300   | J. _____ | Purchase or lease of goods through<br>another public agency within county<br>limits, city, town, or district.   |

## ANSWERS TO QUIZZES

ETHICS		GENERAL		LEGAL CODES	
1.	Yes	1.	Yes	A.	2.
2.	Yes	2.	No	B.	10.
3.	Yes	3.	Yes	C.	1.
4.	Yes & No	4.	Yes	D.	7.
5.	No	5.	No – Yes	E.	5.
6.	Yes	6.	No	F.	8.
7.	Yes	7.	Yes	G.	3.
8.	Yes & No	8.	No	H.	4.
9.	Yes & No	9.	No	I.	6.
10.	(a) No	10.	No	J.	9.
10.	(b) No	11.	Yes		
11.	Yes	12.	No		
12.	Yes	13.	No		
13.	Yes	14.	Yes		
14.	No	15.	No		
15.	Yes	16.	No		
16.	Yes	17.	Yes; however it depends on how it is written and if it restrains competitive bidding		
17.	No	18.	Yes		
18.	Yes	19.	No		
19.	Yes	20.	Yes		

## 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 (\$84,100 for 2014) 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.

## **APPENDIX A-2**

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.

## APPENDIX A-3

### 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  
the \_\_\_\_\_

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

## **APPENDIX A-4**

### 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.

## **APPENDIX A-5**

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.

## **APPENDIX A-6**

### 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 2014 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 CalRptr. 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 2014 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](mailto: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.

#### FAVORS FAIR USE

- Teaching
- Research
- Scholarship
- Criticism
- Comment
- Parody
- News reporting
- Nonprofit educational institution
- Restricted access (available only to students or other appropriate group)
- Transformative or productive use (Change the work for new utility, adds value to the work or does not diminish the market)

#### OPPOSES FAIR USE

- Commercial activity (Ask: will this be sold?)
- Profiting from the use
- Entertainment
- Bad-faith behavior (Ignoring Copyright Law)
- Denying credit to original author  
(Lack of or no attribution given to original author)

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

#### FAVORS FAIR USE

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

#### OPPOSES FAIR USE

- Unpublished work
- Highly creative work (art, music, film, plays)
- Fiction

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.

**FAVORS FAIR USE**

**OPPOSES FAIR USE**

- |  |  |
|--|--|
| <input type="checkbox"/> Small quantity of work to be used                         | <input type="checkbox"/> Large portion or entire work to be used                 |
| <input type="checkbox"/> Portion used is not central or significant to entire work | <input type="checkbox"/> Portion used is central to work or “heart of the work.” |
| <input type="checkbox"/> Amount is appropriate for favored educational purpose     | <input type="checkbox"/> Fiction   |

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.

**FAVORS FAIR USE**

**OPPOSES FAIR USE**

- |   |  |
|---|--|
| <input type="checkbox"/> User owns (lawfully acquired or purchased copy of original work)             | <input type="checkbox"/> Made openly accessible on the internet or in other public forum                     |
| <input type="checkbox"/> One or a few copies made   | <input type="checkbox"/> Numerous copies made  |
| <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work | <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative |
| <input type="checkbox"/> No similar product marketed by the copyright holder                          | <input type="checkbox"/> Could replace sale of copyrighted work  |
| <input type="checkbox"/> Lack of licensing mechanism  | <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work            |
|   | <input type="checkbox"/> Affordable license fee available for using work                                     |
|   | <input type="checkbox"/> Repeated or long-tem use desired  |

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

Save this checklist and/or send a copy to [copyright@usu.edu](mailto: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:**



# **METHODS OF 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 of prescribed amounts which can be used to pay for authorized minor purchases or to reimburse individuals for out-of-pocket small purchases. These funds can be established either at school or district level within the Education Code limits. Funds may be kept in cash or in checking accounts as security dictates. As the fund is diminished by payments, signed receipts and invoice vouchers supporting these expenditures are submitted to support the expenditure and the expended funds are replaced. Revolving cash funds, sometimes called petty cash funds or imprest funds, provide a low cost way of paying for small purchases without the cost and led time inherent in traditional purchase order preparation. Board Policy may govern the amount and type of such purchases.

##### b. Pre-Payment of Transactions

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

##### c. Instant Money

Another form of pre-payment is the use of instant money (Purchase order draft) as authorized in the Education Code (42821). This account is usually set up for the discretionary use by the purchasing agent. It is most commonly used with vendors outside the immediate area, when time and value do not warrant the formal pricing process. A special purchase order containing a blank check is provided to the vendor who is to fill in the date and amount as he ships the order. The blank check must be restricted in dollar value and show a void date.

#### 2. Open 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.

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.

### 3. Confirming Orders

- a. Pre-assigned Orders Consistent with good purchasing policies, no acquisition should occur without proper authorization from the purchasing department. Emergencies and immediate-need requirements do arise, and a preassigned purchase order number may be given to a district employee to acquire certain items. The employee making the acquisition must obtain an itemized invoice or provide proper invoicing information. No merchandise shall be backordered.
- b. Telephone Orders Phone orders are an expedient method of operation. All phone orders should be identified by a purchase order number or some other control number. All information on a telephone order should be noted on the purchase order or in purchasing notes.

### 4. Purchase Requisition/Order Form

Many Districts require school sites and departments to prepare purchase requisitions to order supplies, materials, and services. The form generally contains fields for Suggested Vendor, delivery location, item description, quantity, budget number and approval of the site/department administrator.

As technology has improved many Districts now utilize an electronic requisition format which includes the same information as a paper requisition however it 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.

## 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) - \$84,100 Adj. for 2014

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 State Office of Procurement of the Department of General Services for a wide range of equipment, supplies and materials. (Write to: State of California, Office of Procurement, Sacramento, CA 95807)
- c. County Superintendent of Schools Contracts – some County Superintendents 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 may be necessary to authorize participation in such cooperative purchasing efforts. Do not assume such joint ventures will automatically obtain the lowest possible cost. The North County Educational Purchasing Consortium formed in 1985 is one of the more successful JPA's providing bids for San Diego County School Districts.
- e. Purchase Through Other Public Agency (Educ. Code § 17595; Pub. Cont. Code §§ 20118, 20652, 20653; Gov't Code § 14931.)

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 General Services without advertising for bids. Educ. Code § 17595; Pub. Cont. Code § 20653.

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.

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 agency<sup>1</sup> 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.)

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.

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<sup>1</sup> "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.)

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.)<sup>1</sup>) 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.<sup>2</sup>

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<sup>2 2</sup> 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; San Mateo County Transit District; Sonoma-Marín Area Rail Transit District; and Monterey-Salinas Transit District.

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

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 and 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.3d 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 "or 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.

## 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:

- A Dictionary for Accountants, Eric L. Kobler, Prentice-Hall, Inc., Englewood Cliffs. New Jersey, 1970.
- Dictionary of Purchasing Terms, National Institute of Governmental Purchasing, Inc., Washington, D. C., 1970.
- Purchasing Handbook, second edition. George W. Aljian, Editor-in-Chief, McGraw-Hill Book Co., Inc. 1966.
- 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.

### Definitions Contained in the Uniform Commercial Code

Accept	Contract of sale	Insolvent	Protect
Acceptance	Contract right	Installment contract	Purchase
Action	Customer	Instrument	Purchaser
Aggrieved party	Debtor	Inventory	Receipt
Agreement	Defendant	Issue	Remedy
Bailee	Definite time	Issuer	Rights
Bearer	Delivery order	Lot	Sale of return
			Sale on
Bearer form	Document	Merchant	approval
			Secondary
Bill of lading	Document of title	Negotiation	party
Bona fide purchaser	Equipment	Note	Secured party
Buyer	Fault	Notice	Security
Buyer in ordinary			
course of Business	Fungible	On demand	Seller
Cancellation	Genuine	Order	Term
Certificate of deposit	Gives	Party	Termination
Certification	Good faith	Presumed	Third party
Conforming to			
Contract	Goods	Presumption	Unauthorized
Consignee	Holder	Proceeds	Value
Consignor	Holder in due course	Promise	Warehouse
	Insolvency		
Contractor	proceedings	Properly payable	

## GLOSSARY

**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 over-the-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.

**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 phrase 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 contract 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.

GAAFR - Government Accounting, Auditing and Financial Reporting.

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.

OBSOLESCE - 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 proportion, 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 well-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 employees, 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 recording 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 CONDITONS** - 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.

WHOLESALE - 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.

## **Standards of Purchasing Practice**

- To regard public service as a sacred trust, giving primary consideration to the interests of the governmental unity 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

- o Maintain standard of conduct / credit to company
- o Relationship with vendor/salesman
- o Good business ethics/personal integrity

#### Buyers expect from Salesman

- o Lowest competitive price / maintaining quality and service
- o Protect inventory loss & obsolescence
- o Info new products
- o Communications
- o Fair & Honest
- o Delivery Service/Emergency

#### Salesman expect from Buyers

- o Listen and keep an Open mind
- o Request special/rush only when needed
- o Fair & Honest
- o No false encouragement

#### Buyer Responsibilities

- o Know supplier capability
- o Realistic technical, quality delivery requirements
- o Supply specifications as necessary

#### Supplier Responsibilities

- o Know supplier Capabilities
- o Meet quality & delivery requirements
- o Know lead times of devices supplied
- o 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	L ikeable
H onest	A ware
A ware	S ensitive
P olite	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**

**Hazardous School Supplies**

**32060. Legislative Findings and Declaration.**

(a) The Legislature finds and declares that art supplies which contain toxic substances or which are potential human carcinogens pose a significant danger to the health and safety of school children. The Legislature also finds and declares that school children are not sufficiently protected by present health laws in so far as materials which may be seriously harmful are not so labeled and therefore children are not properly warned as to the dangers inherent in the use of those materials.

(b) The Legislature intends by this article to ensure that elementary school children are protected by prohibiting the sale of these toxic substances to schools, school districts, and private schools for use in kindergarten and grades 1 to 6, inclusive, and that the toxic substances may be purchased by schools, school districts, and private schools for students in grades 7 to 12, inclusive, only if the materials are properly labeled, as described in Section 32064.

**32061. Art or Craft Material Defined.**

"Art or craft material" means any raw or processed material or manufactured product marketed or being represented by the manufacturer or repackager as being suitable for use in the demonstration or the creation of any work of visual or graphic art of any medium. These media may include, but shall not be limited to, paintings, drawings, prints, sculpture, ceramics, enamels, jewelry, stained glass, plastic sculpture, photographs, and leather and textile goods.

**32062. Human Carcinogen defined.**

(a) "Human carcinogen" means any substance listed as a human carcinogen by the International Agency for Research on Cancer.

(b) "Potential human carcinogen" means one of the following:

- (1) Any substance which does not meet the definition of human carcinogen, but for which there exists sufficient evidence of carcinogenicity in animals, as determined by the International Agency for Research on Cancer.
- (2) Any chemical shown to be changed by the human body into a human carcinogen.

**32063. Toxic Substance Causing Chronic Illness Defined.**

"Toxic substance causing chronic illness" means any of the following:

- (a) Human carcinogens.
- (b) Potential human carcinogens.
- (c) Any substance included in the list of hazardous substances prepared by the Director of Industrial Relations, pursuant to Section 6382 of the Labor Code, notwithstanding exemptions made for substances on the list which are used in particular forms, circumstances, or concentrations, if the health hazard presented by the substance is not the subject of label statements required by federal law.

**32064. Order or Purchase Of Art Craft Materials Containing Toxic Substances; Restrictions; Presumptions of Toxicity.**

(a) For the 1987-88 academic year and for each academic year thereafter, no art or craft material that is deemed by the State Department of Health Services to contain a toxic substance, as defined by the California Hazardous Substance Act, Chapter 4 (commencing with Section 108100) of Part 3 of Division 104 of the Health and Safety Code, or a toxic substance causing chronic illness, as defined in this article, shall be ordered or purchased by any school, school district, or governing authority of a private school in California for use by students in kindergarten and grades 1 to 6, inclusive.

(b) Commencing June 1, 1987, any substance that is defined in subdivision (a) as a toxic substance causing chronic illness shall not be purchased or ordered by a school, school district, or governing authority of a private school for use by students in grades 7 to 12, inclusive, unless it meets the labeling standards specified in Section 32065.

(c) If the State Department of Health Services finds that, because the chronically toxic, carcinogenic, or radioactive substances contained in an art or craft product cannot be ingested, inhaled, or otherwise absorbed into the body during any reasonably foreseeable use of the product in a way that could pose a potential health risk, the department may exempt the product from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) For the purposes of this article, an art or craft material shall be presumed to contain an ingredient that is a toxic substance causing chronic illness if the ingredient, whether an intentional ingredient or an impurity, is 1 percent or more by weight of the mixture or product, or if the State Department of Health Services determines that the toxic or carcinogenic properties of the art or craft material are such that labeling is necessary for the adequate protection of the public health and safety.

**32065. Warning Labels.**

Warning labels for substances specified in Section 32064 shall meet all of the following standards:

(a) The warning label shall be affixed in a conspicuous place and shall contain the signal word "WARNING," to alert users of potential adverse health effects.

(b) The warning label shall contain information on the health-related dangers of the art or craft material.

(1) If the product contains a human carcinogen, the warning shall contain the statement: "CANCER HAZARD! Overexposure may create cancer risk."

(2) If the product contains a potential human carcinogen, and does not contain a human carcinogen, the warning shall contain the statement: "POSSIBLE CANCER HAZARD! Overexposure might create cancer risk."

(3) If the product contains a toxic substance causing chronic illness, the warning shall contain, but not be limited to, the following statement or statements where applicable:

(A) May cause sterility or damage to reproductive organs.

(B) May cause birth defects or harm to developing fetus.

(C) May be excreted in human milk causing harm to a nursing infant.

(D) May cause central nervous system depression or injury.

(E) May cause numbness or weakness in the extremities.

(F) Overexposure may cause damage to (specify organ).

(G) Heating above (specify degrees) may cause hazardous decomposition products.

- (4) If a product contains more than one chronically toxic substance, or if a single substance can cause more than one chronic health effect, the required statements may be combined into one warning statement.
- (c) The warning label shall contain a list of ingredients that are toxic substances causing chronic illness.
- (d) The warning label shall contain a statement or statements of safe use and storage instructions, conforming to the following list. The label shall contain, but not be limited to, as many of the following risk statements as are applicable:
- (1) Keep out of reach of children.
  - (2) When using, do not eat, drink, or smoke.
  - (3) Wash hands after use and before eating, drinking, or smoking.
  - (4) Keep container tightly closed.
  - (5) Store in well ventilated area.
  - (6) Avoid contact with skin.
  - (7) Wear protective clothing (specify type).
  - (8) Wear NIOSH certified masks for dust, mists, or fumes.
  - (9) Wear NIOSH certified respirator with appropriate cartridge for (specify type).
  - (10) Wear NIOSH certified supplied air respirator.
  - (11) Use window exhaust fan to remove vapors and assure adequate ventilation (specify explosion proof if necessary).
  - (12) Use local exhaust hood (specify type).
  - (13) Do not heat above (specify degrees) without adequate ventilation.
  - (14) Do not use/mix with (specify material).
- (e) The warning label shall contain a statement on where to obtain more information, such as, "Call your local poison control center for more health information."
- (f) The warning label, or any other label on the substance, shall contain the name and address of the manufacturer or repackager.
- (g) If all of the above information cannot fit on the package label, a package insert shall be required to convey all the necessary information to the consumer. In this event, the label shall contain a statement to refer to the package insert, such as "CAUTION: See package insert before use." For purposes of this section, "package insert" means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art supply. The language on this insert shall be nontechnical and nonpromotional in tone and content.

The requirements set forth in subdivisions (a) to (g), inclusive, shall not be considered to be complied with unless the required words, statements, or other information appear on the outside container or wrapper, or on a package insert that is easily legible through the outside container or wrapper and is painted in a color in contrast with the product or the package containing the product.

An art or craft material shall be considered to be in compliance with this section if Article 6 (commencing with Section 108500) of Chapter 4 of Part 3 of Division 104 of the Health and Safety Code requires labeling of the art or craft material, and if the material is in compliance with that article.

The manufacturer of any art or craft material sold, distributed, offered for sale, or exposed for sale in this state shall supply upon request to the State Department of Health Services any information required by the department in order to perform its duties under this article.

**32066. List of Toxic Art or Craft Materials; Preparation and Distribution.**

The State Department of Health Services shall, by June 1, 1987, develop a list of those art or craft materials which cannot be purchased or ordered for use in kindergarten and in grades 1 to 6, inclusive, and a list of materials which, while not currently sold or manufactured, may be reasonably suspected to still exist at some schools. In developing the lists, the State Department of Health Services shall consult with manufacturers of art supplies, artists' groups, health organizations, and toxicologists as the State Department of Health Services deems appropriate. The Department of Health Services shall periodically update the lists as it deems appropriate.

The Superintendent of Public Instruction shall distribute the lists to all school districts and the governing authorities of all private schools in California, and shall make the lists available to preschools, childcare centers, and other businesses and organizations which involve children in the use of art or craft materials. The superintendent shall inform school districts and governing authorities of all private schools of the requirements of this article, and shall encourage school districts and the governing authorities of all private schools to dispose of art or craft material which may contain human carcinogens, potential human carcinogens, or chronically toxic substances, but which is not affected by this article.

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## **TITLE 8 California Code of Regulations Section 5194. Hazard Communication.**

(a) (Reserved)

(b) Scope and Application.

(1) This section requires manufacturers or importers to assess the hazards of substances which they produce or import, and all employers to provide information to their employees about the hazardous substances to which they may be exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers.

(2) This section applies to any hazardous substance which is known to be present in the work place in such a manner that employees may be exposed under normal conditions of use or in a reasonably foreseeable emergency resulting from work place operations.

(3) This section applies to laboratories that primarily provide quality control analyses for manufacturing processes or that produce hazardous substances for commercial purposes, and to all other laboratories except those under the direct supervision and regular observation of an individual who has knowledge of the physical hazards, health hazards, and emergency procedures associated with the use of the particular hazardous substances involved, and who conveys this knowledge to employees in terms of safe work practices. Such excepted laboratories must also ensure that labels of incoming containers of hazardous substances are not removed or defaced pursuant to section 5194(f)(4), and must maintain any material safety data sheets that are received with incoming shipments of hazardous substances and ensure that they are readily available to laboratory employees pursuant to section 5194(g).

(4) This section does not require labeling of the following substances:

(A) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(B) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Food and Drug Administration;

(C) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and;

(D) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer

Product Safety Commission.

(5) This section does not apply to:

(A) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(B) Tobacco or tobacco products;

(C) Wood or wood products including lumber which will not be processed, where the manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility (non-excluded hazardous substances which are used in conjunction with wood or wood products, or are known to be present as impurities in those materials, and wood which may be subsequently sawed or cut, generating dust, are covered by this section);

(D) Articles (hazardous substances used in the manufacture or use of an article are covered by this section unless otherwise excluded);

(E) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(F) Retail food sale establishments and all other retail trade establishments, exclusive of processing and repair work areas;

(G) Consumer products packaged for distribution to, and use by, the general public, provided that employee exposure to the product is not significantly greater than the consumer exposure occurring during the principal consumer use of the product;

(H) The use of a substance in compliance with regulations of the Director of the Department of Pesticide Regulation issued pursuant to section 12981 of the Food and Agricultural Code.

(I) Work operations where employees only handle substances in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or transportation); however, this section does apply to these operations as follows:

1. Employers shall ensure that labels on incoming containers of hazardous substances are not removed or defaced;

2. Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous substances, shall obtain a material safety data sheet for sealed containers of hazardous substances received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

3. Employers shall ensure that employees are provided with information and training in accordance with subsection (h) except for the location and availability of the written hazard communication program under subsection (h)(2)(C), to the extent necessary to protect them in the event of a spill or leak of a hazardous substance from a sealed container.

(6) Proposition 65 Warnings.

(A) Notwithstanding any other provision of law including the preceding subsections, an employer which is a person in the course of doing business within the meaning of Health and Safety Code Section 25249.11(a) and (b), is subject to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the "Act") (Health and Safety Code s 25249.5 et seq.), and shall comply with the Act in the manner set forth in subsections (B) and (C) below. The following employers are not subject to the Act:

1. an employer employing fewer than ten employees;
2. any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof;
3. any entity in its operation of a public water system as defined in Health and Safety Code Section 4010.1.

(B) Exposures Subject to Proposition 65 and Hazard Communication. Before exposing any employee to any hazardous substance that otherwise falls within the scope of this section and which requires a warning under this Act (see 22 CCR Section 12000, Chemicals Known to the State to Cause Cancer or Reproductive Toxicity) except as provided in subsection (D) below, any employer subject to the Act shall comply with the requirements set forth in subsections (d) through (k). Such compliance shall be deemed compliance with the Act.

(C) Exposures Subject to Proposition 65 Only. Before knowingly and intentionally exposing any employee to any hazardous substance that does not otherwise fall within the scope of the section, but which requires a warning under the Act (see 22 CCR Section 12000, Chemicals Known to the State to Cause Cancer or Reproductive Toxicity) except as provided in subsection (D) below, any employer subject to the Act shall either provide a warning to employees in compliance with California Code of Regulations Title 22 (22 CCR) Section 12601(c) in effect on May 9, 1991 or shall comply with the requirements set forth in subsections (d) through (k).

(D) Exposures Not Subject to Proposition 65. A warning required by subsection (B) and (C) above shall not apply to any of the following:

1. An exposure for which federal law governs warning in a manner that preempts state authority.
2. An exposure that takes place less than twelve months subsequent to the listing of the chemical in 22 CCR Section 12000.
3. An exposure for which the employer responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for the chemicals known to the State to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1,000) times the level in question for chemicals known to the State

to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical in 22 CCR Section 12000. In any enforcement action the burden of showing that an exposure meets the criteria of this subsection shall be on the employer.

(E) Additional Enforcement of Proposition 65. In addition to any other applicable enforcement provision, violations or threatened violations of the Act may be enforced in the manner set forth in Health and Safety Code Section 25249.7 for violations and threatened violations of Health and Safety Code Section 25249.6. Compliance with 22 CCR Section 12601(c) in effect on May 9, 1991 shall be deemed a defense to an enforcement action under Health and Safety Code Section 25249.7.

(F) All terms and provisions of subsection (b)(6) shall have the same meaning as the following 22 CCR Sections in effect on May 9, 1991: 12201(a), 12201(b), 12201(c), 12201(d), 12201(f), 12201(k), 12502, 12601, 12701(a), 12701(b), 12701(d), 12703, 12705, 12707, 12709, 12711, 12721, 12801, 12803, 12805, 12821 and 12901. The above listed 22 CCR Sections in effect on May 9, 1991 are printed in Appendix E to this section. Additionally, all terms and provisions of subsection (b)(6) shall have the same meaning as in the Act and in 22 CCR Section 12000.

(c) Definitions.

Article. A manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) which does not release, or otherwise result in exposure to, a hazardous substance under normal conditions of use or in a reasonably foreseeable emergency resulting from workplace operations.

CAS number. The unique identification number assigned by the Chemical Abstracts Service to specific chemical substances.

Chemical name. The scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the substance for the purpose of conducting a hazard evaluation.

Chief. The Chief of the Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142, or designee.

Combustible liquid. Any liquid having a flashpoint at or above 100oF (37.8oC), but below 200oF (93.3oC), except any mixture having components with flashpoints of 200oF (93.3oC), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

Common name. Any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a substance other than by its chemical name.

Compressed gas. Compressed gas means:

(A) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70oF (21.1oC); or

(B) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130oF (54.4oC) regardless of the pressure at 70oF (21.1oC); or

(C) A liquid having a vapor pressure exceeding 40 psi at 100oF (37.8oC) as determined by ASTM D-323-72.

Container. Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, tank truck, or the like that contains a hazardous substance. For purposes of this section, pipes or piping systems are not considered to be containers.

Department. The Department of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142, or designee.

Designated representative. Any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

Director. The Director of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142, or designee.

Distributor. A business, other than a manufacturer or importer, which supplies hazardous substances to other distributors or to employers.

Division. The Division of Occupational Safety and Health (Cal/OSHA), California Department of Industrial Relations, or designee.

Emergency. Any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or does result in a release of a hazardous substance into the workplace.

Employee. Every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment.

Employer. Employer means:

(A) The State and every State agency.

(B) Each county, city, district, and all public and quasi-public corporations and public agencies therein.

(C) Every person including any public service corporation, which has any natural person in service.

(D) The legal representative of any deceased employer.

Explosive. A substance that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

Exposure or Exposed. Any situation arising from work operation where an employee may ingest, inhale, absorb through the skin or eyes, or otherwise come into contact with a hazardous substance.

Flammable. A substance that falls into one of the following categories:

(A) Aerosol, flammable. An aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(B) Gas, flammable:

1. A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent of volume or less; or

2. A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(C) Liquid, flammable. Any liquid having a flashpoint below 100oF (37.8oC), except any mixture having components with flashpoints of 100oF (37.8oC) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

(D) Solid, flammable. A solid, other than a blasting agent or explosive as defined in section 5237(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint. The minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(A) Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100oF (37.8oC), that do not have a tendency to form a surface film under test; or

(B) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100oF (37.8oC), or that have a tendency to form a surface film under test; or

(C) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

**Hazard warning.** Any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the health hazards and physical hazards of the substance(s) in the container(s).

**Hazardous substance.** Any substance which is a physical hazard or a health hazard or is included in the List of Hazardous Substances prepared by the Director pursuant to Labor Code section 6382.

**Health hazard.** A substance for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes substances which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a substance is to be considered hazardous for purposes of this standard.

**Identity.** Any chemical or common name which is indicated on the material safety data sheet (MSDS) for the substance. The identity used shall permit crossreferences to be made among the required list of hazardous substances, the label and the MSDS.

**Immediate use.** The hazardous substance will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

**Importer.** The first business with employees within the Customs Territory of the United States which receives hazardous substances produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.

**Label.** Any written, printed, or graphic material displayed on or affixed to containers of hazardous substances.

**Manufacturer.** A person who produces, synthesizes, extracts, or otherwise makes a hazardous substance.

**Material safety data sheet (MSDS).** Written or printed material concerning a hazardous substance which is prepared in accordance with section 5194(g).

**Mixture.** Any solution or intimate admixture of two or more substances, at least one of which is present as a hazardous substance, which do not react chemically with each other.

**NIOSH.** The National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

**Organic peroxide.** An organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

**Oxidizer.** A substance other than a blasting agent or explosive as defined in section 5237(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

**Physical hazard.** A substance for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

**Produce.** To manufacture, process, formulate, repackage, or relabel.

**Pyrophoric.** A substance that will ignite spontaneously in air at a temperature of 130oF (54.4oC) or below.

**Responsible party.** Someone who can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary.

**Specific chemical identity.** The chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

**Substance.** Any element, chemical compound or mixture of elements and/or compounds.

**Trade secret.** Any confidential formula, pattern, process, device, information, or compilation of information which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. A trade secret shall not include chemical identity information which is readily discoverable through qualitative analysis. Appendix D sets out the criteria to be used in evaluating trade secrets.

**Unstable (reactive).** A substance which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

**Use.** To package, handle, react, or transfer.

**Water-reactive.** A substance that reacts with water to release a gas that is either flammable or presents a health hazard.

**Work area.** A room or defined space in a workplace where hazardous substances are produced or used, and where employees are present.

**Workplace.** Any place, and the premises appurtenant thereto, where employment is carried on, except a place the health and safety jurisdiction over which is vested by law in, and actively exercised by, any state or federal agency other than the Division.

(d) Hazard Determination.

(1) Manufacturers and importers shall evaluate substances produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required

to evaluate substances unless they choose not to rely on the evaluation performed by the manufacturer or importer for the substance to satisfy this requirement.

(2) Manufacturers, importers, or employers evaluating substances shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The manufacturer, importer, or employer evaluating substances shall treat any of the following sources as establishing that the substances listed in them are hazardous:

(A) The list of hazardous substances prepared by the Director pursuant to Labor Code section 6382 and as promulgated in title 8, California Code of Regulations, section 339. The concentrations and footnotes which are applicable to the list shall be understood to modify the same substance on all other source lists or hazard determinations set forth in sections 5194(d)(3)(B)- 5194(d)(5)(D).

(B) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA).

(C) Threshold Limit Values for Chemical Substances in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition).

The manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the substances in these source lists in accordance with the requirements of the standard.

(4) Manufacturers, importers, and employers evaluating substances shall treat any of the following sources as establishing that a substance is a carcinogen or potential carcinogen for hazard communication purposes:

(A) National Toxicology Program (NTP), Annual Report on Carcinogens, (latest edition).

(B) International Agency for Research on Cancer (IARC) Monographs (latest editions).

(C) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note to (d)(4):The Registry of Toxic Effects of Chemical Substances published by the National Institute for Occupational Safety and Health indicates whether a substance has been found by NTP or IARC to be a potential carcinogen.

(5) The manufacturer, importer, or employer shall determine the hazards of mixtures of substances as follows:

(A) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(B) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under section 5194(d)(4);

(C) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and

(D) If the manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Manufacturers, importers, or employers evaluating hazardous substances shall describe in writing the procedures they use to determine the hazards of the substance they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Director, and NIOSH. The written description may be incorporated into the written hazard communication program required under section 5194(e).

(e) Written Hazard Communication Program.

(1) Employers shall develop, implement, and maintain at the workplace a written hazard communication program for their employees which at least describes how the criteria specified in sections 5194(f), (g), and (h) for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(A) A list of the hazardous substances known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas);

(B) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with substances contained in unlabeled pipes in their work areas.

(2) In multi-employer workplaces, the written hazard communication program shall include the methods employers will use to inform any employers sharing the same work area of the hazardous substances to which their employees may be exposed while performing their work, and any suggestions for appropriate protective measures, including the following:

(A) The methods the employer will use to provide the other employer(s) with access to the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous substance the other employer(s)' employees may be exposed to while working;

(B) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(C) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Chief, and NIOSH, in accordance with the requirements of section 3204(e).

(f) Labels and Other Forms of Warning.

(1) The manufacturer, importer, or distributor shall ensure that each container of hazardous substances leaving the workplace is labeled, tagged or marked with the following information:

(A) Identity of the hazardous substance(s);

(B) Appropriate hazard warnings; and

(C) Name and address of the manufacturer, importer, or other responsible party.

Exception to (f)(1):For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous substances is only for the solid metal itself and does not apply to hazardous substances used in conjunction with, or known to be present with, the metal and to which the employees handling the metal may be exposed (for example, cutting fluids or lubricants).

(2) Manufacturers, importers, or distributors shall ensure that each container of hazardous substances leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (18 U.S.C. 1801 et seq.) and regulations issued under that Act by the Department of Transportation.

(3) If the hazardous substance is regulated by these orders in a substance-specific health standard, the manufacturer, importer, distributor, or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(4) Except as provided in sections 5194(f)(5) and (f)(6) the employer shall ensure that each container of hazardous substances in the workplace is labeled, tagged, or marked with the following information:

(A) Identity of the hazardous substance(s) contained therein; and

(B) Appropriate hazard warnings.

(5) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by section 5194(f)(4) to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift. In construction, the employer may use such written materials in lieu of affixing labels to individual containers as long as the alternative method identifies and accompanies the containers to which it is applicable and conveys the information required to be on a label.

(6) The employer is not required to label portable containers into which hazardous substances are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. In construction, the employer is not required to label portable containers into which hazardous substances are transferred from labeled containers, so long as either the labeled container stays on the jobsite or the employer has complied with section 5194(f)(5).

(7) The employer shall not remove or intentionally deface existing labels on incoming containers of hazardous substances, unless the container is immediately marked with the required information.

(8) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(9) The manufacturer, importer, distributor, or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(10) Manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a substance shall revise the labels for the substance within three months of becoming aware of the new information. Labels on containers of hazardous substances shipped after that time shall contain the new information. If the substance is not currently produced or imported, the manufacturer, importer, distributor, or employer shall add the information to the label before the substance is shipped or introduced into the workplace again.

(g) Material Safety Data Sheets.

(1) Manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous substance they produce or import. Employers shall have a material safety data sheet for each hazardous substance which they use.

Note to (g)(1):Employers should also refer to section 3204 concerning information to be retained after a particular substance is no longer in use.

(2) Each material safety data sheet shall be in English (although the employer may maintain copies in other languages as well) and shall contain at least the following information:

(A) The identity used on the label, and, except as provided for in section 5194(i) on trade secrets:

1. If the hazardous substance is a single substance, its chemical and common name(s) and CAS number(s);

2. If the hazardous substance is a mixture which has been tested as a whole to determine its hazards, the chemical, common name(s), and CAS number(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,

3. If the hazardous substance is a mixture which has not been tested as a whole:

a. The chemical and common name(s), and CAS number(s) of all ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except that substances identified as carcinogens under subsection 5194(d)(4) shall be listed if the concentrations are 0.1% or greater;

b. The chemical and common name(s), and CAS number(s) of all ingredients which comprise less than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

c. The chemical, common name(s), and CAS number(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

(B) Physical and chemical properties of the hazardous substance (such as vapor pressure, flash point);

(C) The physical hazards of the hazardous substance, including the potential for fire, explosion, and reactivity;

(D) The health hazards of the hazardous substance, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the substance;

(E) The potential route(s) of entry;

(F) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the manufacturer, importer, or employer preparing the material safety data sheet, where available.

(G) Whether the hazardous substance is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs, (latest editions), or by OSHA;

(H) Any generally applicable precautions for safe handling and use which are known to the manufacturer, importer, or employer preparing the material safety data sheet, including the appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for cleanup of spills and leaks;

(I) Any generally applicable control measures which are known to the manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(J) Emergency and first-aid procedures;

(K) The date of preparation of the material safety data sheet or the last change to it;

(L) The name, address and telephone number of the manufacturer, importer, employer, or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary; and,

(M) A description in lay terms, if not otherwise provided, on either a separate sheet or with the body of the information specified in this section, of the specific potential health risks posed by the hazardous substance intended to alert any person reading the information.

(3) If no relevant information is found for any given category on the material safety data sheet, the manufacturer, importer, or employer preparing the material safety data sheet shall mark it to indicate that no information was found. If the category is not applicable to the hazardous substance involved, the space shall be marked to indicate that.

(4) Where complex mixtures have similar hazards and contents (i.e. the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the manufacturer, importer, or employer become aware of any significant information regarding the hazards of a substance, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the substance is not currently being produced or imported, the manufacturer or importer shall add the information to the material safety data sheet before the substance is introduced into the workplace again.

(6) Manufacturers or importers shall ensure that distributors and purchasers of hazardous substances are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated. The manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the purchaser prior to or at the time of the shipment. If the material safety data sheet is not provided with the shipment, the purchaser shall obtain one from the manufacturer, importer, or distributor as soon as possible. The manufacturer or importer shall also provide distributors or employers with a material safety data sheet upon request.

(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and purchasers of hazardous substances.

(8) The employer shall maintain copies of the required material safety data sheets for each hazardous substance in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access,

microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)

(9) Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous substances in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous substances. However, the employer shall ensure that in all cases the required information is provided for each hazardous substance, and is readily accessible during each work shift to employees when they are in their work area(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives, and to the Chief, in accordance with the requirements of section 3204(e). NIOSH and the employee's physician shall also be given access to material safety data sheets in the same manner.

(12) If the material safety data sheet, or any item of information required by section 5194(g)(2), is not provided by the manufacturer or importer, the employer shall:

(A) Within 7 working days of noting this missing information, either from a request or in attempting to comply with section 5194(g)(1), make written inquiry to the manufacturer or importer of a hazardous substance responsible for the material safety data sheet, asking that the complete material safety data sheet be sent to the employer. If the employer has made written inquiry in the preceding 12 months as to whether the substance or product is subject to the requirements of the Act or the employer has made written inquiry within the last 6 months requesting new, revised or later information on the material safety data sheet for the hazardous substance, the employer need not make additional written inquiry.

(B) Notify the requester in writing of the date that the inquiry was made, to whom it was made, and the response, if any, received. Providing the requestor with a copy of the inquiry sent to the manufacturer, producer or seller and a copy of the response will satisfy this requirement.

(C) Notify the requestor of the availability of the material safety data sheet within 15 days of the receipt of the material safety data sheet from the manufacturer, producer or seller or provide a copy of the material safety data sheet to the requestor within 15 days of the receipt of the material safety data sheet from the manufacturer, producer or seller.

(D) Send the Director a copy of the written inquiry if a response has not been received within 25 working days.

(13) The preparer of a material safety data sheet shall provide the Director with a copy of the material safety data sheet. Where a trade secret claim is made, the preparer shall submit the information specified in section 5194(i)(15).

(h) Employee Information and Training.

(1) Employers shall provide employees with effective information and training on hazardous substances in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area. Information and training may relate to general classes of hazardous substances to the extent appropriate and related to reasonably foreseeable exposures of the job.

(2) Information and training shall consist of at least the following topics:

(A) Employees shall be informed of the requirements of this section.

(B) Employees shall be informed of any operations in their work area where hazardous substances are present.

(C) Employees shall be informed of the location and availability of the written hazard communication program, including the list(s) of hazardous substances and material safety data sheets required by this section.

(D) Employees shall be trained in the methods and observations that may be used to detect the presence or release of a hazardous substance in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous substances when being released, etc.).

(E) Employees shall be trained in the physical and health hazards of the substances in the work area, and the measures they can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous substances, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(F) Employees shall be trained in the details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

(G) Employers shall inform employees of the right:

1. To personally receive information regarding hazardous substances to which they may be exposed, according to the provisions of this section;

2. For their physician or collective bargaining agent to receive information regarding hazardous substances to which the employee may be exposed according to provisions of this section;

3. Against discharge or other discrimination due to the employee's exercise of the rights afforded pursuant to the provisions of the Hazardous Substances Information and Training Act.

(3) Whenever the employer receives a new or revised material safety data sheet, such information shall be provided to employees on a timely basis not to exceed 30 days after receipt, if the new information indicates significantly increased risks to, or measures necessary to protect, employee health as compared to those stated on a material safety data sheet previously provided.

(i) Trade Secrets.

(1) The manufacturer, importer or employer may withhold the specific chemical identity of a hazardous substance from the material safety data sheet, provided that:

(A) The claim that the information withheld is a trade secret can be supported;

(B) Information contained in the material safety data sheet concerning the properties and effects of the hazardous substance is disclosed;

(C) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(D) The specific chemical identity is made available to health or safety professionals, employees, and designated representatives in accordance with the applicable provisions of this subsection.

(2) Where a physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first-aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret substance to that physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of sections 5194(i)(3) and (4), as soon as circumstances permit.

(3) In non-emergency situations, a manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under section 5194(i)(1), to a health or safety professional (i.e., physician, nurse, industrial hygienist, safety professional, toxicologist, or epidemiologist) providing medical or other occupational health services to exposed employee(s), and to employees and designated representatives, if:

(A) The request is in writing;

(B) The request describes with reasonable detail one or more of the following occupational health needs for the information:

1. To assess the hazards of the substances to which employees will be exposed;

2. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

3. To conduct pre-assignment or periodic medical surveillance of exposed employees;

4. To provide medical treatment to exposed employees;

5. To select or assess appropriate personal protective equipment for exposed employees;

6. To design or assess engineering controls or other protective measures for exposed employees; and,

7. To conduct studies to determine the health effects of exposure.

(C) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health or safety professional, employee or designated representative to provide the occupational health services described in section 5194(i)(3)(B):

1. The properties and effects of the substance;
2. Measures for controlling workers' exposure to the substance;
3. Methods of monitoring and analyzing worker exposure to the substance; and,
4. Methods of diagnosing and treating harmful exposures to the substance;

(D) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(E) The health or safety professional, employee, or designated representative and the employer or contractor of the health or safety professional's services (i.e., downstream employer, labor organization, or individual employee), agree in a written confidentiality agreement that the health or safety professional, employee, or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to the Director, as provided in section 5194(i)(6), except as authorized by the terms of the agreement or by the manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by section 5194(i)(3)(D) shall not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(6) If the health or safety professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the Director, then the manufacturer, importer, or employer who provided the information shall be informed by the health or safety professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(A) Be provided to the health or safety professional, employee, or designated representative within thirty days of the request;

(B) Be in writing;

(C) Include evidence to support the claim that the specific chemical identity is a trade secret;

(D) State the specific reasons why the request is being denied; and,

(E) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health or safety professional, employee, or designated representative whose request for information is denied under section 5194(i)(3) may refer the request and the written denial of the request to the Director for consideration.

(9) When a health or safety professional, employee, or designated representative refers the denial to the Director under section 5194(i)(8), or upon the Director's own initiative when receiving information pursuant to section 5194(g)(13) which is claimed to be a trade secret, the Director shall consider the evidence to determine if:

(A) The manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(B) The health or safety professional, employee, or designated representatives has supported the claim that there is a medical or occupational health need for the information; and,

(C) The health or safety professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

(10) If the Director determines that the specific chemical identity requested under section 5194(i)(3) is not a bona fide trade secret, or that it is a trade secret but the requesting health or safety professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the manufacturer, importer, or employer will be subject to citation by the Director. The Director shall so notify the manufacturer, importer, or employer by certified mail.

(11) The manufacturer, importer, or employer shall have 15 days after receipt of notification under section 5194(i)(10) to provide the Director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(12) The Director shall determine whether such information is protected as a trade secret within 15 days after receipt of the justification and statement required by section 5194(i)(11), or if no justification and statement is filed, within 30 days of the original notice, and shall notify the employer or manufacturer and any party who has requested the information pursuant to the California Public Records Act of that determination by certified mail. If the Director determines that the information is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public.

(13) Prior to the date specified in the final notice provided pursuant to section 5194(i)(12), a manufacturer, importer, or employer may institute an action in an appropriate superior court for a declaratory judgment as to whether such information is subject to protection from disclosure.

(14) If a manufacturer, importer, or employer demonstrates to the Director that the execution of a confidentiality agreement as provided for by section 5194(i)(10) would not provide sufficient protection against the potential harm from the unauthorized disclosure of a

trade secret specific chemical identity, the Director may issue such orders to impose such additional limitations or conditions upon the disclosure of the requested information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the manufacturer, importer, or employer.

(15) Notwithstanding the existence of a trade secret claim, a manufacturer, importer, or employer shall disclose to the Director the specific chemical identity of any hazardous substance in a product for which trade secrecy is claimed. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Director so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(16) Nothing in section 5194(i) shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(j) Appendices.

(1) Appendices A, B, and D to this section are incorporated as part of this section and the provisions are mandatory.

(2) Appendix C contains information which is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(3) Appendix E contains the following 22 CCR Sections: 12201(a), 12201(b), 12201(c), 12201(d), 12201(f), 12201(k), 12502, 12601, 12701(a), 12701(b), 12701(d), 12703, 12705, 12707, 12709, 12711, 12721, 12801, 12803, 12805, 12821, and 12901 in effect on May 9, 1991 that are referred to in subsection (b)(6).

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3/25/08

## **AUTHORIZE DISPOSAL OF TEXTBOOKS AND INSTRUCTIONAL MATERIALS FROM**

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.

## NOTICE OF PUBLIC AUCTION AND PUBLIC HEARING INSTRUCTIONAL MATERIALS

NOTICE IS HEREBY GIVEN that the Grossmont Union High School District of San Diego 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: <http://portal.guhisd.net/index.php/departments/business-services/purchasing> or upon request by calling 619-644-8052.

A public hearing will be conducted at 6:30 p.m. during the regularly scheduled Governing Board meeting to be held on June 14, 2012, at 1100 Murray Drive, El Cajon, CA, 92020.

[Priscilla Schreiber](#)  
Clerk of the Governing Board  
Grossmont Union High School District

Publication: San Diego Daily Transcript  
Advertising dates: [January 13, 2012](#)

**CONTRACTS**  
**&**  
**SAMPLE**  
**CONTRACTS**

## 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.

<sup>1</sup> <http://www.ionsonlaw.com/business/contracts-transactions/elements-valid-contract-offer-acceptance-consideration/>

## 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:

Administrators Athletic Coaches Cafeteria Workers Clerical Staff Counselors Examination Monitors Individuals "filling in"	Librarians Nurses Proctors Specialty Teachers (art, poetry, etc.) Substitutes Teachers/Instructors Tutor
---	--

## **DISTRICT PROCEDURES on 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 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.

### **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.

PERSONAL SERVICES WORKSHEET:

DATE: \_\_\_\_\_

CONTRACT NAME: \_\_\_\_\_

CONTRACT # \_\_\_\_\_

Education Code #45103.1

**CATEGORIES PERMITTING CONTRACT FOR SERVICES**

Description	Meets Requirements (Yes/No)
1. The contract is for service currently or customarily performed by classified school employees to achieve cost savings(see separate table)	
2. The contract is for a new school district function for which there is express legislative authority to contract out.	
3. The contract for services cannot be provided by school district employees or are so highly specialized or technical that the district cannot provide the necessary expertise, knowledge, or experience.	
4. Contract for services are incidental to the district's purchase or lease of real or personal property.	
5. Contract for services requires an independent objective opinion.	
6. Contract for services are "emergency" in that services will not be provided for more than 60 working days during an actual emergency to prevent business delays or because the duration of work is limited.	
7. Contractor provides materials, facilities, or equipment that cannot be provided by the district in the location where the services are to be performed.	
8. Contract for services are temporary, urgent, or occasional.	

**COST SAVINGS MEASURES FOR ITEM #1: (Must fulfill all 10 items in table below)**

DESCRIPTION	FULLFILLED OBLIGATIONS? (YES/NO)
1. Contract with a corporation, LLC, partnership, nonprofit, or sole proprietorship?	
2. Contract awarded through a publicized, competitive bidding process?	
3. Proposed wages at industry level and does not result in paying below market wage or rates?	
4. Contract displaces school district employees resulting in layoffs, demotions, transfers, etc.?	
5. Contract contains provisions regarding staff qualifications and contractor has nondiscrimination hiring standards?	
6. Governing board clearly demonstrates that the contract results in actual cost savings to the District?	
7. Does the amount of cost savings clearly justify the size and duration of the agreement?	
8. Are the cost savings large enough to survive cost fluctuations during contract term?	
9. Is the economic risk to the district from contractor rate increases minimal?	
10. Does the economic advantage of contracting out outweigh the public interest in having the district perform the contracted services?	

All of these ten items must be met to apply to section 1 of the first table—Categories allowing personal service contracting.

**Vista Unified School District  
PERFORMANCE AGREEMENT FOR CONSULTANTS**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2006, 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) \_\_\_\_\_  
CONSULTANT shall be responsible for all costs/expenses incident to the performance of services rendered to the DISTRICT. DISTRICT shall not be responsible for any expenses incurred by the CONSULTANT except as provided by the agreement:
3. **LOCATION.** The services listed in paragraph 2 shall be provided at \_\_\_\_\_.
4. **DISTRICT'S OBLIGATIONS** (if any). (e.g., provide publicity for lecture/workshop, provide facilities, equipment, etc.) \_\_\_\_\_
5. **COMPENSATION.** 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.
6. **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, services, materials, or supplies 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.
7. **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. The requirements 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 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. CONSULTANT 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. Contract may be cancelled immediately by written mutual consent by both the DISTRICT AND CONSULTANT.
10. **COMPLETENESS OF 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.
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. **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.
13. **FINGERPRINTING AND CRIMINAL RECORDS CHECK.** CONSULTANT shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice. CONSULTANT shall not permit any employees to have any contact with DISTRICT pupils until such time as CONSULTANT has verified in writing to the DISTRICT that all employees have complied with Education Code Section 45125.1. This section may be waived (site administrator initial to waive \_\_\_\_\_) if the DISTRICT determines that CONSULTANT and/or its employees will have limited contact with DISTRICT pupils or if CONSULTANT and/or its employees will be supervised at all times by DISTRICT employees.
14. **ASSIGNMENT.** This agreement is not assignable by the CONSULTANT in whole or in part without the express written consent of the DISTRICT.
15. Complete a W-9 Form.

IN WITNESS 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.

**Site Administrator Approval:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Cabinet Member Approval:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approval of Human Resources:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**\*CONSULTANT/COMPANY:**

Check will be made payable to the name of the person listed on the W-9 form.

**Name:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Social Security # or Tax ID:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\*May not be a VUSD current or retired employee

## GROSSMONT UNION HIGH SCHOOL DISTRICT INDEPENDENT CONTRACT SERVICES AGREEMENT IRS GUIDELINES

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.)*

<b>PART I</b>	<b>Yes</b>	<b>No</b>
<p>1. Has this category of worker already been classified an "employee" by the IRS?</p> <p style="margin-left: 40px;"> administrators                      individuals "filling in"                      psychologists  ASB workers                          on an individual basis                      school bus drivers  athletic coaches                      intern psychologists                      specialty teachers  cafeteria workers                      librarians                                      substitutes  clerical staff                              nurses    teachers/instructors  counselors                                  proctors    tutors  examination monitors </p>		
<p>2. Is this individual working as an employee prescribed by the Education Code?</p> <p>Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.</p>		
<p>3. Is the individual already an employee of the district in another capacity?</p>		
<p>4. Has the individual performed substantially the same services for the district as an employee in the past?</p>		
<p>5. Are there currently employees of the district doing substantially the same services as will be required of this individual?</p>		
<p>6. Does the district have the legal right to control the method of performance by this individual?</p> <p>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.</p>		
<p>7. Does the District require the individual to submit reports on the details of their work or work at a particular site?</p> <p>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.</p>		
<p><b>If the answer to any of the above questions is "YES" --- STOP HERE !!!</b></p> <p>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.</p>		
<p>8. Will all the work be performed by this individual?</p> <p>Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.</p>		
<p>9. Does the district have a continuing relationship with this individual?</p> <p>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.</p>		
<p>10. Can this relationship be terminated without the consent of both parties?</p>		

	Yes	No
<p>If the answer to the question 8, 9, or 10 is <b>"YES"</b>, there is a good possibility that an employment relationship exists. Questions 8 &amp; 9 are indicators of district control that in Conjunction with other factors imply an employment relationship.</p>		
<p>11. Does the individual operate an independent trade or business that is available to the general public?</p> <p>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 <u>not</u> available to the general public.</p>		
<p>12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.?</p> <p>This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.</p>		
<p>If either 11 or 12 are <b>"NO"</b>, the individual is a district employee STOP HERE and process the individual through Human Resources and payroll. If 11 and 12 are both <b>"YES"</b>, continue...</p>		
<p>13. Does the individual provide all materials and support services necessary for the performance of this service?</p> <p>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.</p>		
<p>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?</p>		
<p>15. Does the individual bear the cost of any travel and business expenses incurred to perform this service?</p> <p>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.</p>		
<p>If 11 and 12 are <b>"YES"</b>, 13 through 15 should also be <b>"YES"</b> and are items that should be written into the Independent Contract.</p> <p>This individual is an Independent Contractor. A <b>"YES"</b> 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.</p>		

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 \_\_\_\_\_

# GROSSMONT UNION HIGH SCHOOL DISTRICT

## Lecturer/Performer Agreement Contract No. \_\_\_\_\_

This agreement is hereby entered into between **Grossmont Union High School District**, 1100 Murray Drive, El Cajon, CA 92020, hereinafter referred to as "District," and

---

Contractor \_\_\_\_\_ Mailing Address \_\_\_\_\_

---

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Taxpayer ID No. \_\_\_\_\_

hereinafter referred to as "Contractor."

1. **Services to be Provided by Contractor.** \_\_\_\_\_  
\_\_\_\_\_
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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_). District shall pay Contractor within 15 days of receipt of invoice by Business Services.
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: Reimbursement of travel expenses not to exceed \$,1300.00 (included in total above).
5. **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:  
N/A
6. **Hold Harmless.** Contract agrees to and does hereby indemnify, hold harmless, and defend the District and its officers, agents and employees from every claim or demand made and every liability, loss, damage or expense that may arise out of this Agreement.
7. **Insurance.** Contractor agrees to carry comprehensive general and automobile liability insurance to protect Contractor and District against liability or claims of liability that may arise out of this Agreement. Contractor shall provide District with certificates of insurance evidencing all coverage and endorsements. Contractor agrees to name District and its officers, agents, and employees as additional insured under said policy.

8. **Worker's Compensation Insurance.** Contractor agrees to procure and maintain in full force and effect Workers' Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Agreement, Contractor agrees to defend and hold harmless the District from such claim.
  
9. **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.
  
10. **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. If employed by another school district in the State of California, please specify below: N/A

District Name	Address	City	State	Zip	Phone

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_, 20\_\_.

**GROSSMONT UNION HIGH  
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

# GROSSMONT UNION HIGH SCHOOL DISTRICT

## Independent Contractor Agreement

Contract No. \_\_\_\_\_

This agreement is hereby entered into between **Grossmont Union High School District**, 1100 Murray Drive, El Cajon, CA 92020, hereinafter referred to as "District," and

---

Contractor

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 aggregate. Within five days of the effective date of 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: PO Box 1043, La Mesa, CA 91944-1043

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 San Diego 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 \_\_\_\_\_, \_\_\_\_.

**GROSSMONT UNION HIGH  
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

# GROSSMONT UNION HIGH SCHOOL DISTRICT

**BID NAME**  
**BID #**

**BID AND CONTRACT DOCUMENTS**

Date

**Purchasing Department  
1100 Murray Drive  
El Cajon, CA 92020  
619-644-8048 – 619-644-0963 (Fax)**

## NOTICE TO BIDDERS

**NOTICE IS HEREBY GIVEN** that the Grossmont Union High 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 1100 Murray Drive, El Cajon, Ca. 92020-5664 (mailing address: P.O. Box 1043, La Mesa, Ca. 91944-1043); or accessible on our website [www.guhsd.net/purchasing](http://www.guhsd.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 Grossmont Union High 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.

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.

Jim Kelly  
Clerk of the Governing Board  
Grossmont Union High School District

Publication: San Diego Daily Transcript  
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, \_\_\_\_\_, 2012.** Bids shall be received in the Grossmont Union High School District's Purchasing Department, 1100 Murray Drive, El Cajon, 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. 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:

Pam Garrett, Buyer III or  
Guiselle Carreon, Director of Purchasing  
Grossmont Union High School District  
1100 Murray Drive  
El Cajon, CA 92020

3. **PROPOSALS:** 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 by typewriter 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. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the bidder was placed in the mail prior to the opening of bids.

- 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.
- g. 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.
- h. 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.
- i. 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.
- j. No bid shall include California sales or use tax, or Federal excise tax.
- k. All bids on items shall be f.o.b. school district.
- l. No charge for packing, draying, postage, express, or for any other purpose will be allowed over and above the prices bid.
- m. When requested bidders shall submit properly marked samples of each such article, on which bid is made to:

Grossmont Union High 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.

- n. 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.
- o. 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
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.
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 District reserves the right to award the contract as a lot or on an individual lot basis to the lowest responsible bidder best meeting specifications and bid requirements, with past performance and other options set forth in the bid documents taken into consideration. The District shall take into account the performance of the bidder with respect to any recent contract(s) with the District and other school districts. The Governing Board of the District, however, reserves the right to reject any one or all bids, to waive any informalities in the bids or in the bidding, to judge the merit and qualifications of the materials, equipment, and services offered, and to accept whatever bid is deemed to be the lowest responsible bid **MEETING ALL THE CRITERIA SPECIFIED IN THE BID.**
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 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 Grossmont Union High 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 uncopyrighted 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/\$1,000,000 Aggregate.

Property Damage Liability Insurance including auto (both owned and non-owned): Not Less Than . . . \$1,000,000 Aggregate.

Insurance certificate must name Grossmont Union High 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 Grossmont Union High 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

Item No.	Description	Brand	Annual Estimated Quantity	Unit Price	Extended Price
1.					
2.					
3.					
4.					
5.					
6.					
7.					

**Attach Material Safety Data Sheets for all listed chemicals or substituted brands.**

Total Bid Price:

\_\_\_\_\_ dollars and \_\_\_\_\_  
Cents.

(\$ \_\_\_\_\_)

**SPECIFICATIONS:**

[Technical specifications here](#)

## DELIVERY LOCATIONS & ADDRESSES

Grossmont High School  
1100 Murray Drive  
El Cajon, CA 92020

Helix Charter School  
7323 University Avenue  
La Mesa, CA 91941

El Cajon Valley High School  
1035 E. Madison Avenue  
El Cajon, CA 92021

Mount Miguel High School  
1800 Sweetwater Road  
Spring Valley, CA 91977

El Capitan High School  
10410 Ashwood Street  
Lakeside, CA 92040

Monte Vista High School  
3230 Sweetwater Springs Blvd.  
Spring Valley, CA 91977

Santana High School  
9915 Magnolia Avenue  
Santee, CA 92071

Valhalla High School  
1725 Hillsdale Road  
El Cajon, CA 92019

Montgomery Middle School  
1570 Melody Lane  
El Cajon, CA 92019

**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 would accept option to renew for the following periods and at what percentage:

Dates	Yes	No	Max. % Increase
7-1-13 to 6-30-14	_____	_____	_____
7-1-14 to 6-30-15	_____	_____	_____

The undersigned hereby proposes and agrees to furnish, and deliver the goods and services in accordance with the terms, conditions, specifications and prices herein quoted.

Corporate Seal  
(if a corporation)

\_\_\_\_\_  
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 Grossmont Union High School District and will be administered by Guiselle Carreon, 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 five percent (5%).
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.
6. **EVALUATION CRITERIA:** This bid will be evaluated on the following factors: Price, competency, credibility, 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.
7. **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.**
8. **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.
9. **CANCELLATION FOR INSUFFICIENT OR NON-APPROPRIATED FUNDS:** The bidder hereby agrees and acknowledges that monies utilized by the District o 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 Grossmont Union High 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. **SAVE HARMLESS CLAUSE:** 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: \_\_\_\_\_

Corporate Seal

DISTRICT:

Grossmont Union High School District

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Governing Board Date \_\_\_\_\_

**WORKERS' COMPENSATION CERTIFICATE**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations, of ability to self-insure and to pay any compensation that may become due to employees.

I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the work of this contract.

\_\_\_\_\_  
Proper Name of Bidder

By: \_\_\_\_\_  
\_\_\_\_\_

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

### **WORKERS' COMPENSATION CERTIFICATE**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations, of ability to self-insure and to pay any compensation that may become due to employees.

I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the work of this contract.

\_\_\_\_\_  
Proper Name of Bidder

By: \_\_\_\_\_  
\_\_\_\_\_

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

# SAMPLE DOCUMENTS

**DISCLAIMER:** The following are sample documents and some of them may contain outdated bid limits and are for reference purposes only!

VISTA UNIFIED SCHOOL DISTRICT  
 1234 ARCADIA AVENUE  
 VISTA, CALIFORNIA 92084  
 PURCHASING DEPARTMENT  
 PHONE 760-726-2170 FAX 760-630-0196

REQUEST FOR PRICE QUOTATION - THIS IS NOT AN ORDER !

TO: DELL COMPUTER CORP  
 CUST NO: 001930406  
 ONE DELL WAY  
 ROUND ROCK TX 75682

Vendor ID: 951503  
 TEL # 888-977-3355  
 FAX # 512-283-0406

Please respond by entering your prices for the items listed below. When quoting on a different brand than specified indicate that brand, etc. If you have any questions, phone the buyer shown below.

Due Date: 2/2/2007  
 Quote: 9990095

Buyer: Donna Caperton, Director x2965  
 (760) 726-2170

Item	Qty	Unit	Description	Catalog	Brand	Unit Cost	Ext. Amount
1	2	EA	QUANTUM DLT-V4 TAPE DRIVE, DLT-SCSI				
2	50	EA	TAPE, QUANTUM DLT VSI				
3	2	EA	CLEANING CARTRIDGE, QUANTUM DLT				
4	2	EA	VERITAS BACKUP EXEC FOR WINDOWS SERVERS (V 10 .0) COMPLETE PACKAGE				
5	2	EA	VERITAS BACKUP EXEC FOR WINDOWS SERVERS REMOTE AGENT FOR WINDOWS OR ENTWARE				
6	2	EA	EXTERNAL TAPE DRIVE SCSI CABLE-68 PIN ULTRA 160 SCSI (LVD)				

Vendor Shipping Information: _____	Terms: _____
Signature: _____ Date: _____	Estimated ship in _____ Days
Print Name: _____	Telephone # ( _____ ) _____
FOB: Check one choice below:	FAX # ( _____ ) _____
Ship Point (Customer Expense) \$ _____ ***	*** If 'SHIP POINT' VENDOR MUST SHOW SHIPPING CHARGES
Destination (Vendor Expense) \$ _____	



**BUSINESS**

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**BIDS**

The District shall purchase equipment, supplies and services on a formal competitive bidding basis when required by law. Care shall be taken to observe all statutory requirements for bidding and bidding procedures. In addition, the district shall solicit formal bids whenever it appears to be in the best interest of the District to do so.

To ensure that good value is received for funds expended; specifications shall be carefully designed and shall describe in detail the quality, delivery and service required.

To assist the District in determining whether bidders are responsible, the Board may require pre-qualification procedures as allowed by law and specified in administrative regulation. A copy of any applicable administrative regulations shall be provided to bidders with all bid specifications.

**Legal Reference:****CALIFORNIA EDUCATION CODE**

- 17596 Continuing Contracts
- 39802 Bids and contracts for services (Transportation Services only)
- 38083 Purchase of perishable foodstuffs and seasonal commodities
- 45103.1 Personal Services Contracting

**GOVERNMENT CODE**

- 4331-4334 Preference of California-made materials

**PUBLIC CONTRACT CODE**

- 3410 United States produce and processed foods
  - 12201 Preference for purchase of recycled paper products
  - 12205 Bidders to specify percentage of recycled paper products
  - 12200 Definitions
  - 12401 Purchase of recycled products preferred
  - 20107 Bidder's security
- [the rest is the same as is currently in the materials]

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
BIDS

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**(BIDS AND QUOTATIONS)**

Advertised Bids

Whenever expenditures exceed \$15,000 for work to be done, services rendered or \$59,600 for materials, supplies or equipment, the Director of Purchasing shall call for bids by advertising in a local newspaper at least once a week for two weeks. Unless otherwise authorized by law, contracts shall be let to the lowest responsive bidder who shall give such security as the Board of Trustees requires, or else all bids shall be rejected. The Board of Trustees reserves the right to reject all bids for any reason.

When letting a contract for the procurement and/or maintenance of electronic data processing systems and supporting software, the Board may contract with any one of the three lowest responsible bidders.

The Board shall secure bids for any transportation service expenditure of more than \$10,000 when contemplating that such a contract may be made with a person or corporation other than a common carrier, municipally-owned transit system or a parent/guardian of students who are to be transported. The Board may let this contract to other than the lowest bidder.

The Board shall secure competitive bids for personal service contracts for non-instructional services when the justification for outsourcing personal services is based on cost savings as outlined in Education Code section 45103.

Instructions and Procedures for Advertised Bids

Bid instructions and specifications shall include the following requirements and information:

1. All bidders, including bidders for printing contracts, may be requested to specify the minimum, if not exact, percentage of recycled product in the products offered, and both the post consumer and secondary waste content.
2. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
  - a. Cash
  - b. Cashier's Check
  - c. Certified Check
  - d. Bidder's Bond executed by an admitted surety insurer.
3. The security of unsuccessful bidders shall be returned in a reasonable period of time in no event any later than 60 days after the bid is awarded.
4. Under no condition shall bids be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time.
5. When two or more identical bids are received, the Board may determine by lot which bid shall be accepted.
6. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
BIDS

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7. After being opened, all advertised bids shall be made available for review by all interested parties in the offices of the Purchasing Department. Bids will not be removed by interested parties from the Purchasing Department.

Supplementary textbooks, library books, periodicals, educational films, audiovisual materials, text materials, workbooks and instructional computer software packages may be purchased without advertised bidding.

The District may, upon a case-by-case determination of the Board, purchase, lease or contract for equipment and supplies through a public corporation without advertised bids to the extent permitted by state law.

Perishable commodities such as foodstuffs can be purchased through bid or on the open market, depending on district preference. In its purchases, the district shall give preference to products grown, manufactured or produced in California and to foods grown or processed in the United States.

Fitness and quality being equal, the district shall purchase recycled products whenever available at no more than the total cost of non-recycled products.

Professional services, personal services, and advisory services as outlined in Government Code Section 53060 are exempt from competitive bids unless the contracts meet the criteria outlined in Education Code Section 45103. If the justification to provide the services is based on cost savings, then the District will be required to competitively bid for the services regardless of the contract amount.

Prequalification

For any contract for which bids are legally required, the Board may require that each prospective bidder complete and submit a standardized questionnaire and financial statement. For this purpose, the Director of Purchasing shall supply a form, which includes a complete statement of the bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified as prescribed by law. The questionnaires and financial statements shall not be public records and shall not be open to public inspection.

The Director of Purchasing shall establish a uniform system for rating bidders on the basis of completed questionnaires and financial statements in order to determine the size of contracts on which each bidder is qualified to bid.

The Director of Purchasing shall furnish each approved qualified bidder with a standardized bid/proposal form. Bids not presented on the standard form shall be disregarded.

Regulations Relative to the Bidding Activity

1. The Purchasing Department shall periodically estimate requirements of standard items or classes of items and make quantify purchases, thereby effecting economics.
2. Bid instructions and specifications should be clear and complete, setting forth all necessary conditions conducive to competitive bidding.

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
BIDS

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3. The Purchasing Department shall seek bids from those sources able to offer the best prices, consistent with quality, delivery and service.

4. COMPETITIVE PRICING/BIDDING:

Whenever practical, competitive quotes/bids from qualified vendors handling the same or similar product will be secured. The Director of Purchasing may choose to bid any item that lends itself to competitive bidding/pricing.

Individual sites/departments may, for their own information, wish to secure inquiry pricing information on items they intend to purchase, however, it must be understood that these price quotations may not be usable at the time of purchase due to time lapse, quantity changes or incomplete information. Pricing quotations obtained by individual sites and departments are not binding on the District or the purchasing department. Requisitioners should allow sufficient time for the Purchasing staff to obtain quotes/bids place the order, and receive shipment.

Competitive pricing/bids will be secured in accordance with the following guidelines:

Supplies, Equipment, and Services:

\$ - \$2,000	Pricing/quotations will not normally be solicited unless the items are of a price volatile nature, such as office supplies, software, and others.
\$2,000 - \$5,000	The Purchasing staff will obtain at least three quotes either in writing or by telephone.
\$5,000 – up	The Purchasing staff will solicit at least three quotes in writing.
\$59,600	Formal bidding including advertising and Board award of contracts as required under Public Contract Code 20111. Projects cannot be split into smaller orders to avoid bidding (PCC 20116)

For Work to be Done – Public Works:

\$15,000 – up	Formal bidding including advertising and Board award of contract is required as per Public Contract Code 20111. Projects cannot be split into smaller orders to avoid bidding.
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5. Legal formal bids are required for:

Public work/Services (each public works project/services)	Over \$15,000
Suppliers equipment, and materials	Over \$59,600 or legal limit As prescribed by PCC 20111

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
BIDS

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a. Formal Bidding Procedures

Formal bids will be requested in all cases required by law and will be accomplished as follows:

1. A notice inviting sealed bids shall be published at least twice in a newspaper of general circulation in the District and shall contain the time and place of opening of bids. Bids shall also be sought from those sources able to offer the best prices, consistent with quality delivery and service.
2. Bids will be opened by the Director of Purchasing or designee in advance of Board of Trustees meetings to permit time for tabulating and evaluating the bids to make recommendations for Board acceptance, at least five (5) days prior to the meeting date. The Director of Purchasing will provide bid results to all companies participating in bid process within three (3) working days after bids are opened. Bid documents will not be removed from the Purchasing Office.
3. Bids will be received at the prescribed time and place indicated in the Notice to Bidders. No bids may be accepted after said advertised time unless bid opening time and place are changed through an authorized issued addendum from the Purchasing department. All authorized issued addenda will be issued no later than 72 hours prior to advertised bid date.
4. Bids will then be returned to the Purchasing Department for evaluation. Review of submitted bids, by interested parties, will be allowed after issuance of bid results. Appointments will be made with the Purchasing department, to review the documents
5. Construction bids are advertised and opened in the same manner. However, the construction contract documents approved by the District's legal counsel are the bid documents used for all construction requiring bids.
6. Formal Bid Review/Protest Procedure

The District review/protest procedure must be followed by any bidder who believes a bid award recommendation is not within the published specifications and contract language.

1. A protest on a bid must be filed in writing with the Director of Purchasing within two (2) working days after receipt of the bid summary.
2. Only those bidders who submitted a bid will be allowed to protest an award.
3. The Director of Purchasing will respond in writing to the bid protest outlining the District's decision regarding the protest.

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
BIDS

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4. If the bidder is unsatisfied with the written response, the bidder must request in writing a formal request for the Director of Purchasing to convene a meeting to attempt to resolve the problem.
5. In the event the protest is not resolved, the protest will be referred to the Assistant Superintendent, Business Services.
6. Should the protest not be resolved at this level, it shall be referred to the Board of Trustees along with all documentation and correspondence regarding the protest and the responses at each level.
7. The Board will not act upon a protest until each of the proceeding steps has been exhausted.

Purchase Without Quotations or Bids

Some items, according to law can be purchased without taking estimates or advertising for bids as per Public Contract Code, Section 20118.3, which states, "The Governing Board of any school district may purchase supplementary textbooks, library books, and educational films audiovisual materials, test material, workbooks instructional computer software packages, and periodicals in any amount needed for the operation for the schools of the district without taking estimates or advertising for bids."

Rights of the Board Concerning Bids

The Board of Trustees shall reserve the right to reject any and all bids and waive any irregularities or informalities in any bid or in the bidding.

The Board also reserves the right to enter into a continuing contract with an accepted vendor as per Education Code 17596 which states, "Continuing contracts for work to be done, services to be performed, or for any apparatus or equipment to be furnished, sold, built, leased, 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 or lessor as follows: for work or service, or for apparatus or equipment, not to exceed five years; for materials or supplies not to exceed three years."

CONTRACTS

All contracts between the District and outside agencies shall conform to standards required by law and shall be prepared under the direction of the Superintendent or designee. The power to contract is delegated to the Superintendent, *Chief Financial Officer* or the Director of Purchasing; provided, however, that no contract made pursuant to such delegation 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 within 60 days of signing the contract.

All contracts, where appropriate, shall be submitted to the legal advisor of the District for review and approval.

The District shall not enter into any contract with a person, agency, or organization if it has knowledge that such person, agency or organization discriminates on the basis of race, color, creed, sex, religion, ancestry, national origin, age or non-job-related handicap or disability, either in employment practices or in the provision of benefits of services to students or employees.

CONTRACT/PURCHASE ORDER REVISIONS/CHANGE ORDERS

*Revisions to contracts or purchase orders exceeding 10% of the originally approved expenditure and under \$5,000 shall be provided to the Board for ratification through the purchase order listing report. Revisions to contracts in exceed 10% of the originally approved expenditure and over \$5,000 shall be provided to the Board for approval prior to processing through the contract listing report.*

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

Legal References:EDUCATION CODE

<u>200 - 262.4</u>	Prohibition of discrimination on the basis of sex
<u>14505</u>	Provisions required in contracts for audits
<u>17595-17606</u>	Contracts
<u>35182.5</u>	Contract prohibitions
<u>45103.5</u>	Contracts for management consulting service related to food service
<u>17605</u>	Authority to Purchase supplies material, equipment and services

CODE OF CIVIL PROCEDURES

685.010	Rate of interest
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GOVERNMENT CODE

<u>12990</u>	Nondiscrimination and compliance employment program
<u>53262</u>	Contract provision re maximum cash settlement
<u>53262</u>	Ratification of contacts with administrative officers

LABOR CODE

<u>1775</u>	Penalties for violations
<u>1810-1813</u>	Working hours

PUBLIC CONTRACT CODE

<u>4100-4114</u>	Subletting and subcontracting fair practices
<u>7104</u>	Contracts for excavations; discovery or hazardous waste

7106 Noncollusion affidavit  
20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder  
20104.50 Construction Progress Payments  
22300 Performance retentions  
20118.4 *Change Orders to Contracts without Competitive Bidding*  
UNITED STATES CODE, TITLE 20  
1681-1688 TITLE IX, DISCRIMINATION

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
CONTRACTS

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3312 AR

The Purchasing Department maintains files on district contracts except for those contracts dealing with special education students that are maintained by the Special Education Department. A contract, in its broadest sense encompasses all services, materials, and supplies used to operate a school and may be initiated by a school or department. Such services include those of architects and engineers, professional services, construction contracts, and other types used for operations and instructional activities. Contracts also include the purchase of bid and non-bid items for materials, supplies, and equipment, including the construction of schools and other facilities.

All work or services to be performed, supplies and equipment to be ordered, regardless of the dollar value, require a contract to be approved prior to the start, performance or order date. The authority to sign a contract has been delegated by the Board of Trustees to the Superintendent, Chief Financial Officer, and the Director of Purchasing.

Conflicts of Interest

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

**FORMS OF CONTRACTS**

Purchase Order

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

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

It is the practice of the District to utilize the Purchase Order in lieu of signing vendor copies of maintenance agreements, licensing agreements, and other service contracts. Public Works contracts under the \$15,000 bid limit utilize a special short form contract and agreement delegated to the Director of Purchasing for signature.

All maintenance, public works under \$15,000, and service contracts exceeding \$5,000.00 will be presented as a consent item to the Board of Trustees for approval and ratification within 60 days of entering into the contract at the next available board meeting.

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
CONTRACTS

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Competitive Bid

When a projected expenditure exceeds the formal bid limits prescribed by Public Contract Code 20111 for materials or services and all public works contracts in excess of \$15,000, a formal competitive bid is required.

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

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

Independent Contractor Agreements

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

Each school site or department will submit the District's Performance Agreement (3000.5), the purchase requisition, and the independent contractor checklist certifying compliance with IRS regulations. All Performance Agreements will require approval of the Assistant Superintendent, Human Resources before processing and before work is performed.

➤ **Employee Consultants:**

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

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

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

- Full Description of what the person is to accomplish
- Resume of individual
- W-4 IRS form
- Copy of driver's license
- Copy of social security card
- Recommend one of seven pay levels established for Employee Consultants

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
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Once all documentation is completed, the school site or department will forward documentation to Finance Department for processing through the Payroll System. The Payroll Department will notify sites and Departments indicating that all paperwork has been completed.

➤ **Independent Contractors:**

If an individual is determined to be an Independent Contractor, then the school site or department will complete the "Performance Agreement (3000.5)" along with the following documentation:

- Full Description of what the person is to accomplish
- IRS Independent Contractor Guideline Certification
- W-9 IRS form (Taxpayer identification number)
- Form 590—Withholding Exemption Certificate (Out of state contractors only)
- Pay rate
- Fingerprinting Determination
- Purchase Requisition with budgetary information

Once all the documentation is completed, it will be forwarded to the Human Resources Department for approval by the Assistant Superintendent, Personnel. The Human Resources Department will forward the documentation to the Purchasing Office for processing of the contract. If the contract exceeds \$5,000.00, the contract will be presented to the Board of Trustees on the consent calendar for approval through the Human Resources Personnel Register. Once approved, the Purchasing Department will encumber the funds in the District's financial system.

Specialty Contractor Contracts

Public Works contracts greater than \$1000 and less than \$15,000 requires the use of the specialty contractor contract form insuring that the District complies with all state guidelines for public works contracting. Public Works Projects are defined per PCC 22002 as follows:

- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- (2) Painting or repainting of any publicly owned, leased, or operated facility.

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

The Purchasing Department is responsible for verifying the validity of the contractor's licenses with the State Contractors Licensing Board.

State Allocation Board Contracts

The Superintendent or designee shall ensure that the District complies with disabled veteran business enterprise (DVBE) participation goals of 3% for State Allocation Board funded projects over \$10,000 in the Lease-Purchase program and certain contracts (architectural, on-site inspections and utility hookups) over \$10,000 in the State Relocatable Classroom Program.

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
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For projects requiring DVBE participation goals, bidders will provide to the District certification that the bidder has satisfied the 3% participation goal for DVBEs. If the bidder (s) is unable to meet the 3% participation goal, the District shall evaluate the effort made by the bidder to seek out and consider DVBEs as potential subcontractors or suppliers of equipment or materials. The bidder shall demonstrate a "good faith effort" by submitting documentation as prescribed by District standards.

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

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

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

Fingerprinting Clearance

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

Approvals

All contracts exceeding \$5,000 will be presented to the Board for approval on the consent calendar prior to the start of work except for the Specialty Contractor Contracts which shall be approved up to the legal bid limits through the purchase order listing approval process. Contracts for services identified in Government Code Sections 4525 through 4529.5 exceeding \$10,000 will be presented to the Board for approval on the consent calendar prior to the start of work.

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

Revisions/Change Orders:

*Revisions to contracts or purchase orders exceeding 10% of the originally approved expenditure and under \$5,000 shall be provided to the Board for ratification through the purchase order listing report. Revisions to contracts in exceed 10% of the originally approved expenditure and over \$5,000 shall be provided to the Board for approval prior to processing through the contract listing report. All revisions to contracts, performance agreements or purchase orders will be processed through the Purchasing Department.*

*Revisions to construction/public work contracts may not exceed 10% of the awarded contract or the legal bid limit for public works projects whichever is greater. Due to the nature of construction/public work activity and to keep the public work activity on schedule, the Board authorizes the Superintendent or his designee to negotiate any single change order up to 3% of the awarded contract with ratification by the Board of Trustees*

BUSINESS SERVICES

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NON-INSTRUCTIONAL OPERATIONS  
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*within sixty (60) days of the change order. Any change orders for construction/public work contracts exceeding 10% will require competitive bids.*

*Negotiations for change orders for facility projects will be handled by the Director of Construction; negotiations for change orders for maintenance projects will be handled by the Director of Maintenance and Operations; and all other negotiations for change orders will be handled by the Director of Purchasing. All change orders will be specified in writing and signed off by both the District and the Contractor prior to ratification by the Board.*

## 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 college 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.

In order for us to accept a request for sole source/sole brand the certification, the form referenced herein should be made a part of your justification and be signed by an authorized department representative. This certification will remain on file for audit purposes.

### B. PROCEDURE

Sole source/brand purchasing is an exception to the normal procurement function and requires a detailed justification. 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.



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:

**RESOLUTION NO. 04-71**

**RESOLUTION OF THE BOARD OF EDUCATION OF  
THE VISTA UNIFIED SCHOOL DISTRICT APPROVING A SOLE SOURCE  
CONTRACT FOR EXERCISE EQUIPMENT, ASSESSMENT TOOLS, CURRICULUM,  
SOFTWARE AND STAFF TRAINING/CERTIFICATION WITH NATIONAL SCHOOL  
FITNESS FOUNDATION, INC.**

**WHEREAS**, the Vista Unified School District (“District”) desires to lease-purchase and install an integrated package consisting of exercise equipment, assessment tools, curriculum, software and staff training/certification for the Washington Middle School physical education program; and

**WHEREAS**, National School Fitness Foundation, Inc. (“NSFF”) is the only supplier that can provide the integrated package consisting of exercise equipment, assessment tools, curriculum, software and staff training/certification for the Washington Middle School physical education program; and

**WHEREAS**, the District and NSFF desire to enter into a contract for the supply and installation of the integrated package consisting of exercise equipment, assessment tools, curriculum, software and staff training/certification for the Washington Middle School physical education program; and

**WHEREAS**, the California courts, in cases such as San Diego Service Authority for Freeway Emergencies v. Superior Court (1988) 198 Cal.App.3d 1466, have carved out an exception to the competitive bidding requirement when letting a project out to bid would result in no competitive advantage to the public entity.

NOW, THEREFORE, THE BOARD OF THE VISTA UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

**SECTION 1. Findings:**

1. NSFF possesses a unique integrated package consisting of exercise equipment, assessment tools, curriculum, software and staff training/certification unavailable from other fitness equipment providers for the following reasons:
  - The NSFF Fitness Program (“Program”) contains all the necessary proprietary materials, forms, worksheets, licenses, master copies and record keeping materials in print and electronic format for physical education class instruction and curriculum implementation
  - The Program provides strength equipment, cardiovascular equipment, assessment equipment, emergency response equipment and other Program equipment
  - The fitness portions of the Program include staff training and certification on all phases of the Program

- The Program provides for initial and subsequent assessments of the health levels of all participants in the Program and which are used to determine the progress of each participant and individualize each exercise to fit the participant
  - Individual participants in the Program receive hands on education in the areas of muscle strength, muscle endurance, flexibility and cardiovascular fitness
  - The Program is intended to provide core fitness to the participants and a formulated curriculum staff can measure the progress of the students and themselves
2. Because the Program desired by the District cannot be provided by any other supplier were the District to undertake the process and expense of drafting contract specifications, advertising and competitively bidding the purchase, no competitive advantage to the District would result because only NSFF would be capable of submitting a responsive bid.
  3. Therefore, the Board finds that this contract falls under the exception to the competitive bidding requirements as set forth in San Diego Service Authority for Freeway Emergencies v. Superior Court (1988) 198 Cal. App.3d 1466, above, and need not be competitively bid.

**SECTION 2. Award of Contract:** The Board does hereby determine that National Schools Fitness Foundation, Inc. shall be the supplier for the District's integrated package of exercise equipment, assessment tools, curriculum, software and staff training/certification materials needs, due to the authorities above. The Board does hereby award the contract for the purchase of said materials to National Schools Fitness Foundation, Inc. at the price named and pursuant to the terms and conditions contained in that certain NSFF Fitness Program and Contribution Agreement which is on file with the District and attached hereto as Exhibit "A."

The Director of Purchasing is authorized to execute and attest the Contract on behalf of the District, together with such non-substantive changes as may be necessary and to execute and deliver on behalf of the District such other documents and instruments as may be necessary or convenient for purposes of administration of the Contract.

**SECTION 3. Effective Date:** This Resolution shall take effect immediately upon its adoption by the District.

APPROVED AND ADOPTED this 26<sup>th</sup> day of February, 2004.

Ayes:  
Noes:  
Abstain:  
Absent:

PASSED AND ADOPTED by unanimous vote of the members of the Governing Board of the Vista Unified School District this 26<sup>th</sup> day of February, 2004 by the following vote:

AYE:  
NOES:  
ABSENT:

STATE OF CALIFORNIA    )  
                                  )ss  
COUNTY OF SAN DIEGO    )

I, Carol Weise Herrera Clerk of the Governing Board of the Vista Unified School District, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a regularly called and conducted meeting held on said date.

\_\_\_\_\_  
Carol Weise Herrera  
Clerk of the Governing Board

**PURCHASING OVERVIEW**

Type	Category	Features
<b>GENERAL PURCHASES</b> Include supplies equipment operating or maintenance services, not requiring Contractor's license.	Purchase Requisition Less Than \$2,000	No specific competitive requirements. Department Recommendation
	RFQ \$2,000 to \$69,000	Purchasing solicits quotations (may be verbal or written quotes). Award by Purchasing via Purchase Order.
	Formal Bid \$69,000 and Greater	Formal Bid or RFP documents. Purchasing solicits for bid or proposal and award via Agreement and Purchase Order.
<b>PROFESSIONAL SERVICES</b> Includes advisory services from professionals such as engineers architects, attorneys and other specialized consultants.	Purchase Requisition Less Than \$5,000	No specific competitive requirements. Department Recommendation
	Informal RFP \$5,000 to \$25,000	Proposals solicited by Department or Purchasing Department Recommendation Award by Purchasing via Purchase Order/ Agreement of Award. (Brd App/Ratification-Contract Listing)
	Formal RFP \$25,000 to \$50,000	Formal Request For Proposal required. Purchasing solicits proposals. Award by Purchasing via Purchase Order/ Agreement of Award. (Brd App/Ratification-Contract Listing)
	Formal RFP \$50,000 and Greater	Board Approval Formal Request For Proposal required. Purchasing solicits proposals. Award by Board of Trustee after Department/Site selection process.
<b>Construction Services</b> Include work and services performed by a licensed, insured contractor.	Purchase Requisition \$1,000 or Less	No specific competitive requirements. Department Recommendation. Purchase Order is required.
	Informal Quote \$1,000 to \$14,999	Department or Purchasing will solicit at least 3 quotes. Award by Purchasing via Purchase Order. Prevailing wage applies. (Specialty Contractor Agree. required)
	Formal Bid \$15,000 and Greater	Bid through Formal bid. (Award by Board of Trustees)

dcaperton/purchasing overview chart.xls

**BID LIMITS**  
**(Senate Bill – Chapter 897, Statutes of 1995)**

<b>Component (Definition)</b>	<b>Bid Limits as of 1/1/2014</b>
<p><b>EQUIPMENT, MATERIALS, SUPPLIES</b>  <u>20111(a)(1); 20651(a)(1)</u>            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 (God. 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)</p>	<b>\$84,100</b>
<p><b>NON-CONSTRUCTION SERVICES</b>  <u>20111(a)(2); 20651(a)(2)</u>            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.</p>	<b>\$84,100</b>
<p><b>MAINTENANCE</b>  <u>20111(3)(2); 20651(a)(3)</u> 20656            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.</p>	<b>\$84,100</b>
<p><b>PUBLIC PROJECT WORK</b>  <u>20117 (b), 20651(b)</u>            Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and any repair work involving publicly owned, leased, or operated facilities.</p>	<b>\$15,000 Labor &amp; Materials</b>
<p><b>FORCE ACCOUNT OR DAY LABOR</b>  <u>20114(a), 20655(a)</u>            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.</p>	<b>350 hours &lt;35,000 ADA 750 hours or \$21,000 if &gt;35,000 ADA or &gt;15,000 FTE for Comm. College</b>
<p><b>CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT</b>  <u>22032(a)(b)(c)</u>            Performed by employees, purchase order, or negotiated contract:            Let by informal bid: (note, if all bids exceed \$175,000, may award up to \$187,500)            Formal Bid:</p>	<b>\$45,000 or less \$45,001 to \$175,000 &gt;\$175,000</b>
<p><b>TIME LIMITS ON CONTINUING CONTRACTS:</b>            (Education Code section 17596)            Work, services, apparatus or equipment:            Materials or supplies:</p>	5 Years 3 Years

SAMPLE

# BID SCHEDULE

## Phase 2A: Infrastructure at Mt. Miguel High School BID NO. GU-08.01.INFR

Bid Specification & Drawings Due	April 10, 2008
Guiselle – Vacation	April 14-19, 2008
Notice to Bidders under CUPCCAA	April 18, 2008
DVBE Ad placed by CM	April 21, 2008
Advertising Dates	April 21 & 28, 2008
Guiselle – Conference	April 28-29, 2008
Walkthrough (Mandatory)	April 29, 2008 (9:00 a.m. – Mt. Miguel)
Substitution Requests Due	May 6, 2008
Questions due from Bidders	May 6, 2008
Addendum Response for Review	May 7, 2008
<b>FINAL Addendum to Bidders</b>	May 8, 2008
<b>Open Bids</b>	<b>May 13, 2008 (2:00 p.m. – Bond Trailer)</b>
Agenda Item <b>Completed</b>	May 16, 2008
<b>Preliminary Notice of Award</b>	<b>May 20, 2008</b>
<b>Protest Period Ends</b>	<b>May 20, 2008</b>
<b>Governing Board – Bid Award</b>	<b>May 22, 2008</b>
Notice of Award	May 9, 2008
<b>Preconstruction/LCP Meeting</b>	<b>TBD</b>
<b>Contract Submittals due to District</b>	<b>May 27, 2008</b>
Notice to Proceed	May 28, 2008
<b>Technical Submittals due to Architect</b>	<b>As requested by CM</b>
<b>Start Date:</b>	<b>May 29, 2008</b>
<b>Project Completion Date:</b>	<b>November 10, 2008</b>
Project Estimate	\$425K - \$475K
Construction Manager	Turner Construction, Hank Withaar
Program Manager	Tim Ireland, Gafcon
Facility Planner/Project Manager	Janea Quirk

District /PM
Architect/CM
Contractors

## Blind Bid Process

For this to work properly, it would probably be best if you provided the envelopes to submit 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:

	<b>Bidder A</b>	<b>Bidder B</b>	<b>Bidder C</b>
Base Bid	100,000	<b>99,000</b>	101,000
Alternate 1	18,900	20,000	17,000
Option w/Alt. 1	118,900	119,000	<b>118,000</b>
Alternate 2	7,150	8,250	8,000
Option w/Alt. 2	<b>107,150</b>	107,250	109,000
Option w/Alt. 1 & 2	126,050	127,250	<b>126,000</b>

## CONTRACTING PROCEDURES

### Standard Bid Limits:

\$15,000 for public works projects  
\$84,100 for materials, services, and supplies (eff. Jan. 1, 2014)

### Bid Limits Pursuant to CUPCCAA:

Informal Quotes: \$45,000 or less requires three quotes (per District policy).<sup>1</sup>  
Informal Bids: \$45,001 - \$175,000<sup>2</sup> Requires notification to registered vendors OR  
plan rooms and sealed bids.  
Formal Bid \$175,001 and up

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.

### Legal Requirements for Contracts:

All contracts for construction above \$1,000 are subject to prevailing wages.

All contracts for construction above \$15,000/\$45,000 require a PWC1 be filed with the Department of Industrial Relations.

Public works projects above \$25,000 require a Payment Bond.

All public works projects, **should** have a performance bond. Performance bonds are optional, but strongly recommended.

Other contract documents include:

Notice to Proceed (to be issued after 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

---

<sup>1</sup> Effective January 1, 2012, the lower bid limit will be \$45,000.

<sup>2</sup> Effective January 1, 2012, a Governing Board may award a bid up to \$187,500 if only one bid is received or if rebidding would not be feasible.

Certificate of Workers' Compensation  
List of Subcontractors (if applicable)  
Fingerprinting Certification  
Drug & Tobacco Free Certification  
Asbestos Certification  
DVBE Documentation (contracts above \$10,000 that are funded out of SFB funds.)

**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 \$30K the project should be bid OR each component should be bid separately.

The bid limit for supplies or equipment is cumulative on a fiscal year basis and currently stands at \$84,100. 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. The District has allowed up to 10%.

**POWAY UNIFIED SCHOOL DISTRICT  
BOARD POLICY**

**Originator:** Asst. Superintendent, BSS

**Issue No:** 1

**Date:** 3/19/01

**Page:** 1 of 1

**Reference:** EC 39656, 39657

**ARTICLE: 6.0 BUSINESS SUPPORT SERVICES**

**6.10 FINANCE**

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**SECTION 6.18 CREDIT CARD ACCOUNTS AND USAGE**

The Director of Finance is authorized to augment purchasing procedures by opening and maintaining credit card accounts for use by Superintendent's Cabinet, Purchasing Department, and other staff members as prescribed by Administrative Procedure 6.18.1. The Director of Finance 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 Board of Education. All purchases shall conform to the purchasing policies currently established by the Board.

## Purchasing Card (P-Card)

**Use your Purchasing Card (P-Card) for small dollar, high volume purchases, such as:**

- Office Supplies
- Travel
- Staff Meetings

**Disallowed expenditures: P-Card payments to or for the following are not allowed:**

- Lecturers and presenters
- Consultants
- Contracted services including telephone contracts
- Gift cards
- Phone cards
- Buying equipment over \$499.99 including sales tax
- Gifts or flowers for co-workers or for staff
- Staff parties

### **Clearing your purchase on Smart Data Online**

- Please code and describe the charge within 10 days of purchase
- If the expense is related to a conference, give the title of the conference and the names of attendees
- If the charge is not cleared in 10 days, the cards will be temporarily frozen
- If there is continued misuse of the P-Card, your card will be cancelled

### **Common Problems**

- Not clearing charges on Smart Data Online
- Not forwarding invoices / receipts to the accounting department in a timely fashion
- Buying equipment over \$ 499.00
- Using the site P-Card for ASB purchases
- Using the P-Card to charge "flight change" fees (e.g., if you come home early from a district paid conference). This fee is your responsibility.

## Purchasing Card Administrative Procedure

---

### 1.0 PURPOSE:

To set forth the Policies and Procedures for the District Purchasing Card Program.

### 2.0 INTRODUCTION:

The Poway Unified School District (The District) Purchasing Card Program has been established to provide a convenient means with which to make purchases and, at the same time, reduce the costs associated with initiating and paying for those purchases. The Accounting Department is responsible for managing the Program and each school and department is responsible for managing its Cardholder accounts. Two areas of responsibility have been defined within each school or department to assist in this management effort. They are the Cardholder and School or department head. It is important to understand that these areas of responsibility do not necessarily equate to two separate individuals within the school or department. It is permissible for one individual to be assigned one or more of these responsibilities as defined in these Policies and Procedures. The ultimate decision as to how each of these responsibilities is assigned will be made within each school or department.

### 3.0 DEFINITIONS:

**3.1 Purchasing Card:** A MasterCard issued to an employee of The District for the purpose of making authorized purchases on the District's behalf. The District will issue payment for charges made with the Purchasing Card.

**3.2 Cardholder:** District full-time permanent employee whose name appears on the Purchasing Card and is accountable for all charges made with that card.

**3.3 School or department head:** District employee(s) within each school or department responsible for verifying that all charges against the Cardholder's account are approved and that the documentation is retained within the school or department. School or department heads have the ability to allocate individual charges to any of the District budget accounts under their control. Cardholders may be their own School or department heads and a School or department head may oversee more than one Cardholder account depending on how the school or department elects to manage its accounts. A school or department may have more than one School or department head.

**3.4 Program Administrator:** The Accounting Department employee responsible for administering the Purchasing Card Program for the District and acting as the main contact for the District.

**3.5 Transaction / Spending Limit:** A dollar limitation of purchasing authority assigned to the Cardholder for each total charge made with the Purchasing Card. This amount must not exceed the predetermined spending limit. School or

departments establish limits on a per Cardholder basis. A single transaction/charge may include multiple items but cannot exceed the predetermined spending limit.

**3.6 Monthly Spending Limit:** A dollar limitation of purchasing authority assigned to the Cardholder for the total of all charges made during each monthly billing cycle. Schools or departments establish limits on a per-Cardholder basis.

**3.7 Monthly Statement:** A listing of all transactions charged to the Cardholder's card account up to the end of the monthly billing cycle. This statement is sent by the processor, directly to the Cardholder, on a monthly basis.

**3.8 Default General Ledger Account:** The District account code assigned to specific merchant category codes.

**3.9 Support Documentation:** A merchant produced or non-District document that records the relevant details for each item purchased including quantities, amounts, a description of what was purchased, the total charge amount and the merchant's name and address (e.g. sales receipt, original invoice, packing slip, credit receipt, etc.).

#### **4.0 RECEIVING THE PURCHASING CARD:**

**4.1** A complete Cardholder Account Form must be submitted for each prospective Cardholder. The School or department head must sign this form, select the purchasing controls and then forward to the Program Administrator.

**4.2** All prospective Cardholders must attend a training session and sign a Cardholder Agreement prior to receiving a Purchasing Card.

**4.3** 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 received.

#### **5.0 AUTHORIZED CARD USE:**

**5.1** Cardholders are authorized to use the Purchasing Card to purchase any merchandise or services required as a function of their duties at the District **with the exception of the following:**

1. Items for personal use
2. Items for non-District purposes
3. Cash advances
4. Any purchase prohibited by District policy or not related to District business
5. Equipment valued at more than \$499.99 including tax.
6. All personal services performed by an individual, including but not limited to presenters, lecturers, interpreters, et al. No independent contractors are allowed to be contracted with the Purchasing Card. Use the Consultant Services Request form B74 and follow the rules under the Business Services Guide.

7. Contracted services valued at \$2,000 or greater.

5.2 Only the Cardholder whose name is embossed on the Purchasing Card is authorized to use the card and is responsible for ensuring that all charges made with the card are in compliance with these Policies and Procedures.

5.3 The total value of any one charge made with the Purchasing Card may not exceed the single transaction limit stipulated on the Cardholder's Enrollment Form.

## 6.0 UNAUTHORIZED AND/OR INAPPROPRIATE CARD USE:

**The Purchasing Card must never be used to purchase items for personal use or for non-District purposes even if the Cardholder intends to reimburse the District.**

**A Cardholder who makes an unauthorized purchase with the Purchasing Card, as defined in section 5.0, or uses the Purchasing Card in an inappropriate manner will be subject to disciplinary action that can include card cancellation and termination of employment at the District.**

6.1 Failure to comply with the requirements of this User Manual may result in immediate revocation of procurement card privileges if any of the following exceptions occur:

- Splitting of charges to avoid the single purchase dollar limit.
- Loaning the card to another employee for use.
- Allowing purchases to be signed for by anyone other than the Cardholder. The exception being a delivery receipt, explained in this User Manual Procedure 9.
- Failure to submit receipts for charges:
- An inadvertent personal purchase occurs for the second time.
- Second time the monthly Cardholder statement is submitted to Accounting more than 10 days after the monthly statement date.
- Second time the attached receipts do not match the item descriptions or dollar amounts listed on the monthly statement of account.

## 7.0 MAKING A PURCHASE WITH THE PURCHASING CARD:

7.1 Confirm that the selected merchant accepts MasterCard. If not, choose another. In either case, inform the Program Administrator, via the school or department Contact, about the fact that the original merchant did not accept MasterCard.

7.2 When making purchases in person, 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 3.0 (paragraph 3.9).

7.3 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:

1. Cardholder name and phone number
2. School or department name
3. Complete delivery address, including suite number, and the words "MasterCard Purchase"

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 3.0 (paragraph 3.9).

## 8.0 MERCHANDISE RETURNS AND EXCHANGES:

**8.1** The Cardholder is responsible for contacting the merchant when merchandise purchased with the Purchasing 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. Documentation showing the proper resolution of the exchange is to be retained with the support documentation for that purchase.

## 9.0 RECORDS RETENTION:

**9.1 Cardholder Responsibility:** 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 Section 3.0 (paragraph 3.9).

**9.2 Receipt Not Available:** For mail, phone, fax or Internet purchases in which a receipt is not available, use a copy of the completed application, flier or order form as the receipt. E-mail 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.

In all other instances, if the receipts are unavailable, the Cardholder must submit a formal written, signed affidavit explaining and describing the transaction in detail.

**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 affidavit describing the transaction in detail. The Cardholder's supervisor must review and sign the written affidavit.

## **10.0 CARDHOLDER VERIFICATION OF CHARGES:**

**10.1** Cardholders are accountable for all charges made with their Purchasing Cards and are responsible for checking all transactions against the corresponding support documentation to verify their accuracy and propriety. Verification should be done regularly using the MasterCard's on-line transaction review system, SmartData Online and the Cardholder's printed Monthly Statement.

**10.2** All transactions processed during a monthly cycle will be reflected on a monthly statement of account. Each Cardholder will receive a copy of their statement of account at the end of the monthly cycle. During the cycle, Cardholders are responsible for retaining the original copy of all transaction receipts.

Cardholders are to review their transactions on Smart Data Online (SDOL) for accuracy, including transactions, amounts, and default General Ledger (GL) codes. If a GL code for a purchase is incorrect, the Cardholder is to reallocate the default GL code and replace it with the desired GL code. Once each transaction is properly allocated, the Cardholder will check the "Cardholder Reviewed" box, which will "lock" the information into the system.

Original receipts must be stapled to the monthly statement along with any required written explanations.

~~The monthly statement of account and attached receipts should then be forwarded to the Accounting Department within 10 days from the date on the statement.~~

Keep a record (duplicate copies) of all receipts, written explanations, statements and forms submitted. Each Cardholder is responsible for keeping their 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 their supervisor of the location where the receipts and documentation are kept.

Charges will be expensed to the Cardholder's school or department by Accounting using the account information listed on the monthly Cardholder's statement of account.

Accounting will review each monthly statement and if an exception is identified, they will return a Notification of Exceptions report to the supervisor and Cardholder for correction. The Cardholder's school or 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.

**10.3** If a particular charge or credit does not appear on-line or on the Monthly Statement, it should be checked against future on-line transaction information and/or the next Monthly Statement. If the charge or credit does not appear within 60 days after the original charge was made, the Cardholder must notify the Program Administrator.

**10.4** 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. (See Section 11.0)

**10.5** After all transactions have been checked, the Cardholder must forward all documentation to Accounting and send an email to the School or department head informing them that their review is complete and specifying the date ranges reviewed.

#### **11.0 CARDHOLDER CHARGE DISPUTE RESOLUTION:**

In the case of a disputed charge, the Cardholder must try to resolve the dispute directly with the merchant. If the dispute cannot be resolved, the Cardholder must complete a Cardholder Dispute Form within 30 days of the date noted on the Statement that lists the disputed charge and forward the completed form to the Program Administrator.

#### **12.0 SCHOOL OR DEPARTMENT HEAD VERIFICATION OF CARDHOLDER CHARGES:**

**12.1** The School or department head is responsible for reviewing each transaction using SmartData Online and indicating in the designated field if the transaction is approved. ~~Cardholders will perform this function if they are School or department heads.~~

**12.2** For a charge to be approved, there must be adequate support documentation available so that the School or department head can ascertain that the purchase is valid and the Cardholder is accountable for that purchase.

**12.3** For there to be a discrepancy associated with a charge, any one or more of the following situations may exist:

1. Insufficient transaction information.
2. One or more of the criteria for authorized card use set forth in Section 5.0 have not been met.
3. The Cardholder disputes the charge. (See Section 11.0)

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.

*Note:* If a discrepancy cannot be resolved, the Program Administrator must be notified.

**12.4** Transactions must be approved using the on-line transaction review system, as soon as possible after they become available (transactions will be loaded daily). If a particular transaction has not been reviewed within 10 days of the Statement date, a reminder will be sent to the School or department head. If after 30 days the transaction is still undesignated, a warning message will be sent and after 40 days, the Program Administrator will contact the School or department head and the card may be cancelled. At the end of the fiscal year (June 30), the transactions must be reviewed and charged and settled by July 15.

**12.5** After all transactions have been reviewed, the School or department head must e-mail the Program Administrator with review dates.

### **13.0 TRANSACTION REALLOCATION:**

**13.1** For any given charge, the Cardholder has the option to perform an on-line reallocation from the Default General Ledger Account to any other District General Ledger account that is under their management.

### **14.0 PURCHASING CARD SECURITY:**

**14.1** It is the Cardholder's responsibility to safeguard the Purchasing Card and Purchasing Card account number at all times.

**14.2** Cardholders must keep their Purchasing Cards in a secure location at all times.

**14.3** Cardholders must not allow anyone else to use their Purchasing Cards and/or Purchasing Card account numbers.

**14.4** Cardholders must not write their Purchasing Card account numbers where others can easily see them.

### **15.0 LOST, STOLEN OR DAMAGED PURCHASING CARD:**

**15.1** If a Purchasing Card is lost, stolen or damaged, the Cardholder must notify the Card Services Department immediately.

**15.2** Cardholders must notify the Program Administrator if their cards are lost, stolen or damaged within 24 hours after reporting the incident to Card Services.

**15.3** After the above notification procedures have been completed, a new Purchasing Card will be issued to the Cardholder by the Program Administrator.

**15.4** A Purchasing Card that is found after it has been reported lost or stolen must be destroyed by cutting it in half and returned to Card Services. The same procedure applies if a card is damaged. Both card halves must be forwarded to the Program Administrator.

**16.0 CARDHOLDER ACCOUNT MAINTENANCE:** Whenever any of the information contained on a Cardholder's Enrollment Form changes, a Cardholder Account Form must be completed and signed by the Program Administrator. The completed Cardholder Account Form will then to be forwarded to the Program Administrator.

**17.0 CARDHOLDER TRANSFER WITHIN THE DISTRICT:** Cardholders who transfer to a new position within the same school or department and continues to require the use of a Purchasing Card as part of their new duties, should continue to use the same card. Cardholders who no longer require a Purchasing Card in their new position or transfer to a different school or department must cancel their card per the instructions in Section 19.0.

**18.0 CARDHOLDER SEPARATION FROM THE DISTRICT:** Prior to separation from the District, Cardholders must surrender their Purchasing Cards and corresponding support documentation to the Human Resources Department or the School or department head per the instructions in Section 19.0

**19.0 PURCHASING CARD CANCELLATION:** The Program Administrator must be notified immediately when a Purchasing Card is to be cancelled. The card must be destroyed by cutting it in half. Both card halves must be forwarded to the Program Administrator along with a complete Cardholder Account Maintenance Form.

**Poway Unified School District**

<input type="checkbox"/> New Account <input type="checkbox"/> Change (Only complete fields to be changed) <input type="checkbox"/> Delete / Close <input type="checkbox"/> Replacement Card	CARDHOLDER ACCOUNT #: 5405 0720 0000 _____
--	--

**COMPANY INFORMATION**

**CARDHOLDER INFORMATION**

Cardholder Name (24 Characters)		Position
Name Line 2 (24 Characters)		Social Security Number
Address Line 1 (35 Characters)	POWAY UNIFIED SCHOOL DISTRICT	Date of Birth
School/Dept Name (35 Characters)		Mother's Maiden Name
City/State/Zip		Work Phone

**CARDHOLDER CONTROLS (Required unless specified) (Shaded Area for District Approval)**

Spending Limit (CSL) per Month		Single Purchase Limit	
Accounting Approval		Accounting Approval	
Authorizations Per Day (Default=12)		Transactions Per Cycle (30 days)	
Accounting Approval		Accounting Approval	
Dollars Per Day (Optional)		MCC Group (Merchant Category Code)	
Accounting Approval		Accounting Approval	
Prohibited Spending		Prohibited MCC Groups	
Accounting Approval	Financial Transactions, Independent Contractors, Hazardous Materials, All others per Administrative Procedure	Accounting Approval	

**APPROVALS**

School/Dept Manager Name and Title:		Date:
<b>Signature:</b>		
Program Manager Name and Title:	Malliga Tholandt, Director of Accounting	Date:
<b>Signature:</b>		

**CARD SERVICES USE ONLY**

Reporting Hierarchy Levels (Required Information)				
Reporting Hierarchy Level Numbers	Level 2 (i.e. Region)	Level 3 (i.e. Division)	Level 4 (i.e. Sub-Unit)	Level 5 (i.e. Fin Office)

Revised February 25, 2003

**Poway Unified School District**

**CARDHOLDER AGREEMENT**

I agree to use the purchasing card provided by the Poway Unified School District for actual and necessary expenses incurred by me and only by me as cardholder in accordance with Poway Unified School District purchasing card policy 6.18 and administrative procedure. I understand and acknowledge that use of the card may not be delegated to anyone other than myself as cardholder.

I have read the Poway Unified School District purchasing card policy 6.18 and administrative procedure and I agree to abide by them. I acknowledge that use of this card for any other purpose other than Poway Unified School District approved business expenses is prohibited and is grounds for corrective action, up to and including termination. In addition, I must reimburse Poway Unified School District for such charges.

I agree to surrender the purchasing card immediately upon retirement, termination, or upon request of an authorized representative of Poway Unified School District finance department.

I understand that use of the card may be revoked for the following reasons:

1. The card is used for personal or unauthorized purposes.
2. The card is used to purchase alcoholic beverages or any substance, material, or service which violates policy, law, or regulation pertaining to the District.
3. The cardholder allows the card to be used by another individual.
4. The cardholder splits a purchase to circumvent a purchase limit.
5. The cardholder uses another cardholder's card to circumvent a purchase limit assigned to either cardholder.
6. The cardholder accepts a personal gratuity from a vendor.
7. The cardholder uses the card to purchase gratuities or gifts.
8. The cardholder fails to provide the Program Administrator (accounting department) with information about any specific purchase
9. The cardholder fails to provide documentation confirming that charges are approved within thirty days of a billing cycle.
10. The cardholder fails to provide accounting with expense transfer documentation that may be necessary to record a purchase properly.
11. The cardholder does not adhere to any of the procurement card policy or procedure.
12. The purchasing card is the property of the issuing credit union and it may at any time revoke card privileges under the provisions of its policy and procedure.

The cardholder is personally liable for inappropriate charges and shall be personally responsible for the settlement of any dispute on any purchase with a vendor. In addition, the cardholder is personally responsible for guaranteeing that all charges are for appropriate District expenses, that purchases are within budget limits, and that the purchase does not violate any other law, regulation, or policy of the Board of Education. Neither the Credit Union, Bank or the District assumes responsibility for non-District purchases. The cardholder shall be liable to the District, the Credit Union and the Bank for any non-District purchase.

If the card is lost or stolen, I will immediately notify the issuing credit union (Mission Federal Credit Union) Lost/Stolen Department during business hours (800) 580-MFCU (6328) or after business hours (800) 556-5628) and the program administrator (Accounting department 858.748.0010 x2352) by telephone. I will confirm the telephone notification by e-mail, mail or facsimile to the program administrator (finance department). I understand that failure to promptly notify the issuing bank of the theft, loss, or misplacement of the credit card could make me responsible for any fraudulent use of the card.

The use of this card is limited pursuant to the Cardholder Request form.

\_\_\_\_\_  
Signature of Cardholder Date

\_\_\_\_\_  
Typed/Printed Name of Cardholder Cardholder Social Security Number

\_\_\_\_\_  
Malliga Tholand, Director of Accounting Date

# CARDHOLDER DISPUTE FORM

CARDHOLDER NAME: \_\_\_\_\_

CARD NUMBER: XXXX XXXX XXXX \_ \_ \_ \_

PHONE NUMBER: \_\_\_\_\_

MERCHANT NAME: \_\_\_\_\_

DATE OF DISPUTED

TRANSACTION: \_\_\_\_\_

DISPUTE TYPE:

\_\_\_\_ Incorrect Charge

\_\_\_\_ Credit Not Received

\_\_\_\_ Duplicate Charge

\_\_\_\_ Replacement Not Received

\_\_\_\_ Erroneous Charge

\_\_\_\_ Other

EXPLANATION OF DISPUTE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MERCHANT'S RESPONSE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CARDHOLDER

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

RETURN COMPLETED FORM ALONG WITH COPIES OF RELATED SUPPORT DOCUMENTATION TO:  
ACCOUNTING DEPARTMENT



# ESCONDIDO UNION SCHOOL DISTRICT BANKCARD USE POLICY AND PROCEDURES

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Board Policy 3314.3	
Sample: Cardholder Agreement	
Sample: Bankcard Transaction Log	

## GENERAL INFORMATION

Escondido Union School District uses various methods to accomplish the purchase of goods and services. Bankcards may be used to augment purchasing procedures for Board members, cabinet, purchasing department, and other staff members as identified by the superintendent or designee.

The bankcard may be used during district travel for items that cannot be paid for by the regular purchase order procedures (billed by vendor or prepayment by district).

All bankcards, other than those assigned to purchasing department personnel, will be maintained by the superintendent's secretary and will be checked out by the secretary as needed to the cardholder.

## AREA OF RESPONSIBILITY

### US Bank

US Bank is the bankcard contractor who will issue the bankcards.

### Purchasing Department

The purchasing department will act as the program coordinator for the district. The program coordinator will be responsible for account set up, account maintenance and cancellation, and exception and reissue authorizations.

### Cardholder

The cardholder is responsible for ensuring the bankcard is used appropriately and all purchases of commodities are within the Escondido Union School District's purchasing procedures and policies.

### Approving Official

The approving official is responsible for reviewing the charges to ensure that the purchases are appropriate and not on the prohibited list and that the proper documentation is submitted.

The approving official for all Board member and cabinet positions is the superintendent. The approving official for superintendent and purchasing department is the assistant superintendent of business services.

### Accounting

The accounts payable department within the accounting department is responsible for preparing the payments to US Bank.

## PROCEDURES - CARDHOLDERS

### Responsibility

The cardholder is responsible for signing and returning the Cardholder Agreement to the Purchasing Department as soon possible and prior to using the bankcard.

The cardholder is responsible for calling the bank to activate their card once they receive it.

The cardholder is responsible for ensuring the bankcard is used appropriately and all purchases of commodities are in compliance with Escondido Union School District's purchasing procedures and policies.

The cardholder is responsible for the security of the bankcard.

The cardholder's monthly credit limit is \$2000, and these limits begin anew each billing period.

The cardholder shall be personally liable for inappropriate charges.

The cardholder is personally responsible for guaranteeing that all charges are for appropriate district expenses, that purchases are within budget limits, and that the purchase does not violate any other law, regulation, or policy of the Board of Education. Neither the bank nor the district assumes responsibility for non-district purchases. The cardholder shall under no circumstances use the District credit card for any inappropriate purchase.

### Bankcard Use

When the cardholder is not able to utilize regular district purchasing procedures due to time constraints or other reasons, and a need for use of the credit card is anticipated, the cardholder will check out the card from the superintendent's secretary. The cardholder may use the bankcard to secure reservations or purchase supplies in person or by telephone.

**Travel** - Acceptable charges are: meals (up to the suggested EUSD limit, which is currently \$38 per day, or \$20 for dinner, \$10 for lunch, and \$8 for breakfast), auto rental, taxi and/or shuttle. Other charges may be acceptable if the charges were not foreseeable, or able to be processed through regular purchasing procedure. Keep all receipts and submit them with the Bankcard Transaction Log to your approving official within five (5) business days after the transaction or return from district travel.

**Supplies** - "Supplies" are defined as any practical commodity used in the daily operation of business. Supplies should only be purchased if it is not possible to utilize "regular" purchasing procedures. Keep all receipts and submit them with the Bankcard Transaction Log to your approving official within five (5) business days after the transaction or return from district travel.

The cardholder will either go to the place of business and obtain the commodity, or call and place the order. In either case, the cardholder will require the vendors to itemize the receipt/invoice. The cardholder will be responsible for obtaining the itemized receipt or invoice from the vendor and for submitting the receipts with a completed bankcard transaction log within five business days of the transaction. An itemized receipt/invoice consists of the following information:

- Itemized description of commodities or services purchased
- Quantity purchased
- Price per item
- Amount of sales tax and total amount
- Shipping charges, if the district is liable for the cost
- Date purchased

**NO RECEIPTS COMMINGLED WITH PERSONAL EXPENSES WILL BE ACCEPTED.**

Every cardholder shall take reasonable precautions with the card. These include, but are not limited to, the following:

- Keep the card in view after you give it to a clerk. Get it back promptly after they have imprinted it.
- Avoid signing a blank receipt. Draw a line through blank spaces above the total when you sign.
- Destroy all carbons and voided (when a mistake was made) receipts. If the clerk has to keep a voided receipt for the store's accounting system, be sure to get a copy.
- Save all credit card receipts and corresponding itemized, dated, receipts. Turn in all receipts, along with other travel documents, to the accounting department within five (5) business days.
- Never lend your card to anyone.
- Never leave your card, receipts, or carbons where anyone can pick them up.
- Never give your card number over the phone unless you are dealing with a company you are sure is legitimate.
- Whenever possible, use those vendors identified by the purchasing department.

#### Bankcard Transaction Log

Upon completing the bankcard transaction, whether by telephone or in person, the cardholder shall immediately complete the Bankcard Transaction Log (attached) to record the following information:

- Date of purchase
- Description of purchase
- Vendor's name
- Dollar amount
- Appropriate account code for each transaction (may be completed by approving official)

### Return of Card/Transaction Submittals

The bankcard will be returned to the superintendent's secretary within five business days of the last transaction, or within five business days of return from district travel, if applicable, along with the completed Bankcard Transaction Log and itemized receipts for all transactions during the use period. A copy of the log should be retained by the cardholder for reconciliation with the cardholder's statement.

If the cardholder has lost any receipts/invoices, he/she should contact the vendor and request a duplicate.

The superintendent's secretary will see that the logs and receipts are submitted to the appropriate approving official for review and approval.

### Bankcard Statement

At the close of each billing cycle (monthly), each cardholder will receive an individual bankcard statement.

Cardholder reviews the statement for accuracy and reconciles the statement transactions with the copy/copies of the Bankcard Transaction Log(s) for the statement period.

If an item is billed incorrectly, the cardholder must provide a complete explanation on the monthly statement in addition to completing a Cardholder Statement of Questioned Item form (a copy of this form may be requested from the purchasing department).

Cardholder is responsible for contacting the bank contractor on questionable items or disputed items, which appear as a transaction on the bank statement within 30 days after the date of the invoice report.

- Cardholder will complete the Statement of Questioned Item form and mail as instructed on the bottom of the form. Cardholder will immediately send a copy of the Statement of Questioned Item form and statement to the district purchasing department.
- Cardholder will cross the transaction off the bank statement and attach a copy of the Questioned Item form to the bank statement.
- If items purchased with the credit card are found defective, the cardholder has the responsibility to return the item(s) to the merchant for replacement or to receive a credit on the purchase. If the merchant refused to replace the faulty item, then the purchase of this item will be considered to be in DISPUTE.
- A review of various dispute reasons can be located on the following pages.

Chargeback receipts shall be kept until the credit transaction shows up on the bank statement. Chargeback receipts then shall be attached to the bank statement.

## PROCEDURES - APPROVING OFFICIAL

### Reconcile Bank Statements

Approving Officials will be sent the following by the bank contractor.

- Business Account Summary (R090) This is a composite statement of all the individual cardholders the approving official is responsible for who have used their credit cards in the last billing period. For information only.
- I.M.P.A.C. Financial Summary (R063) This is the document which will recap all of the cardholders' charges and will be used as the "invoice" for billing purposes. This document must be attached to all of the Approving Official's cardholder statements and documentation.

Upon receipt of the Bankcard Transaction Log and receipts from the cardholders, the approving official will be responsible for the following:

- Reconciling the bank statements and documentation received from the cardholders with the Approving Official's I.M.P.A.C. Financial Summary
- Within five (5) working days after receipt of the cardholder's bank statement and documentation, the approving official will be responsible for the following:
  - (a) Comparing the Bankcard Transaction Log and receipts received from cardholders with the approving official's bank statement provided by the bank contractor.
  - (b) Reviewing charges to ensure that purchases are appropriated and not on the prohibited lists and that proper documentation is included.
  - (c) Forwarding the entire package to accounts payable while retaining a copy of all.

## PROCEDURES - SUPPORT STAFF

Accounts payable is responsible for preparing claims for payment.

The purchasing department is responsible for coordinating the bankcard program with the State Department of General Services and US Bank.

## PROHIBITED USES

Items Available in the Warehouse

All Equipment

Cash Advances

Splitting of Purchases to Circumvent any Limits

Services which are Repetitious in Nature

Carpeting

Alcoholic Beverages

Art Work

Consultants, Instructors and Speakers

Centralized Maintenance Agreements

Service Agreements

Personal Items

Personal Services

Rental Agreements (other than rental cars)

Lease/Purchase Agreements

Automotive Gasoline and Oil (unless gasoline is purchased for use in rental car for approved district travel)

Facility Improvements

Rental or lease of land or buildings

Purchase of Telephone Services (unless used for allowable calls billed to hotel room during approved district travel)

Gambling, Betting, Securities

Insurance

Political or Religious Organizations

Tax Payments

Court Costs, Fines, Bail, Bond Payments

Any Other Inappropriate Purchases or Payments

## REPLACING BANKCARDS

There will be instances where replacement of bankcards will be needed or a new card issued. It will be the Approving Official's responsibility to initiate this process. Follow the instructions below which applies:

### Replacing a Cardholder

When a cardholder leaves the program, a memorandum from the approving official will be submitted along with the cardholder's bankcard to the purchasing department. DO NOT FOLD, SPINDLE OR MUTILATE BANKCARDS.

### Replacement of Worn Out Card/Defective Cards

If a bankcard needs to be replaced because it is worn out or defective, a memorandum from the approving official requesting a bankcard replacement must be submitted along with the worn out bankcard to the purchasing department. DO NOT FOLD, SPINDLE OR MUTILATE BANKCARDS.

### Reporting Lost Bankcard

Cardholder will immediately contact the bank contractor, approving official and the purchasing department. Provide the complete cardholder name (as shown on the bankcard), card number, date reported to the police (if applicable, and date bank contractor was notified.

- Contact the Bank Contractor at (800) 227-6736

A memorandum from the approving official documenting the lost card will be submitted to the purchasing department.

The purchasing department will contact the bank contractor. A replacement card will be ordered.

## DISPUTE REASONS

The various chargeback reasons, which you will use most often, are described below. These reasons correlate with those found on the Cardholder's Statement of Questioned Item form. If you have any questions regarding the appropriate chargeback reason to use, please contact the I.M.P.A.C. Customer Service Staff at (800) 227-6736.

### Unauthorized Mail/Phone Order

This reason should be used for telephone or mail order transactions. If a sales slip is signed or imprinted with the cardholder's card, this reason does not apply.

### Duplicate Processing

This reason is used when a transaction has been multiple billed to an account. The amounts must be the same. The cardholder should provide the transaction details of the original billing, such as dollar amounts, transaction date, etc. A copy of the monthly bankcard statement on which the billings occur and copy of the original sales slip should be forwarded with the Cardholder's Statement of Questioned Item form to Accounting.

### Merchandise Not Received Due to Cancellation

In the event merchandise was canceled, full details should be provided such as why the transaction was canceled and date of cancellation.

### Merchandise Returned

In the event the merchandise was returned and a credit has not yet posted, the cardholder should describe the reason for returning the merchandise and the date the item was returned. A copy of the reference number on the monthly statement, postal, UPS or other official receipt proving the merchandise was returned should be forwarded with the Cardholder's Statement of Questioned Item form.

### Credit Not Received

This reason may be used when the cardholder has received a credit voucher or written refund acknowledgment from the vendor, but the credit has not posted to the cardholder's account within 30 days from the date on the voucher or acknowledgment. The cardholder acknowledges participation in the transaction but the goods were returned or the services canceled.

The cardholder should state the amount of credit they are expecting and provide a copy of the SOA (statement of account) and credit voucher or acknowledgment letter and forward these with the Cardholder's Statement of Questioned Item form.

### Alteration of Amount

This reason is used when the cardholder participated in the transaction and indicates that the amount was altered without permission. The cardholder must acknowledge the amount before alteration and a copy of the cardholder's copy of draft Must be provided to support this reason. The amount of the credit would be the difference between the amount before alteration and after alteration. The sales draft copy should be forwarded with a copy of the SOA and Cardholder's Statement of Questioned Item form.

### Inadequate Description or Unrecognized Charge

In the event the cardholder does not recognize the transaction description, they should request that US Bank supply a copy of the sales draft due to inadequate description or unrecognized charge. This should be requested only after reviewing their supporting documentation and insuring a merchant (vendor) description or location error has not occurred.

Upon receipt of the request for copy, US Bank will order a copy of the sales slip, which is generally received within 30 days.

In the event the vendor's processing bank cannot provide the copy within Visa allotted time frames, the cardholders account will be credited until such time as a valid draft is received. If US Bank provides a copy and the cardholder determines that a valid dispute exists, a new Cardholder's Statement of Questioned Item form should be sent to US Bank immediately. In either instance, the applicable SOA should be forward with the Cardholder's Statement of Questioned Item form.

### Not as Described

This reason is used when the cardholder claims goods or services were not received as described. The written document of what was to be delivered must be different than what was actually delivered. It is important that the sales draft be specific of what was purchased. For example, this reason could not be used when the cardholder was expecting a Sony tape recorder, model LXX210 and when he or she got back to the office they determined that a Sony model B640 was in the box and the sales draft simply said "tape recorder".

In a telephone order situation, the verbal description is considered the "document characterization." The cardholder must explain in his or her letter how the verbal description was different from what was actually received.

An attempt must be made to return the goods and must be stated in the cardholder complaint. If merchandise was returned, proof of such return should be forwarded with a copy of the SOA and Cardholder's Statement of Questioned Item form to US Bank.

### Cardholder Dispute

This reason should be considered only after reviewing other specific chargeback reasons. This reason requires that the cardholder attempt a resolution with the merchant. A complete description of the problem and the attempted resolution should be provided on the Cardholder's Statement of Questioned Item form. Additionally, a copy of the sales slip and a copy of the Cardholder's Statement of Account on which the transaction appears should be forwarded with the Cardholder's Statement of Questioned Item form.

### Other Dispute Reasons

In the event the reasons discussed here and identified on the Cardholder's Statement of Questioned Item form do not fit the cardholder's dispute circumstances, the cardholder should submit a Cardholder's Statement of Questioned Item form with the transaction detail, a copy of the applicable SOA and a detailed letter of the circumstances of the dispute. Reference should be made to any contact with the vendor, names, telephone numbers, etc. that would be helpful for research.

For all disputes submitted for consideration, a cardholder signature is required.



Board Policy 3314.3  
Cardholder Agreement  
Bankcard Transaction Log

(Note: All other forms may be requested through Purchasing)

**CREDIT CARD ACCOUNTS AND USAGE**

The superintendent or designee is authorized to augment purchasing procedures by opening and maintaining credit card accounts for use by board, cabinet, purchasing department, and other staff members as identified by the superintendent or designee. The superintendent or designee 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 Board of Education.

*Legal Reference:*

EDUCATION CODE

*39656 Delegation of powers to agents; approval or ratification of contracts by governing board  
39657 Delegation of authority to purchase supplies and equipment; limitations on expenditures;  
review; personal liability*

April 8, 1999

ESCONDIDO UNION SCHOOL DISTRICT  
Escondido, California

**Business and Noninstructional Operations**

AR 3314.3

**CREDIT CARD USAGE**

District credit card accounts may be activated for board, cabinet, purchasing department, and other staff members identified by the superintendent or designee and be available for use during district travel for items that cannot be paid for by the regular purchase order procedures or in advance (i.e.: meals). A card held by the Manager/Purchasing and Distribution, or the District Buyer in the absence of the Manager, may be used when means currently available to make purchases or secure advance travel and conference reservations may not be adequate due to time constraints or other reasons. Routine air travel, hotel, car rental and purchases, where possible should be handled through existing purchase order procedures.

Maximum indebtedness at any time for each card will be \$2,000 for board members, and cabinet, and other staff members identified by the superintendent or designee. A \$20,000 limit shall be assigned to the card held by the Manager/Purchasing and Distribution.

All credit cards, other than those assigned to purchasing department personnel, will be maintained by the superintendent's secretary and will be checked out by the secretary as needed to the cardholder.

Every cardholder shall agree to all terms and conditions established by the district. The credit card may not be used for personal items or charges. The cardholder is personally responsible for guaranteeing that all charges are for appropriate district expenses, that purchases are within budget limits, and that the purchase does not violate any other law, regulation, or policy of the Board of Education. Neither the bank nor the district assumes responsibility for non-district purchases. The cardholder shall under no circumstances use the district credit card for any inappropriate purchase. The cardholder shall immediately notify the Assistant Superintendent, Business Services, and the authorizing bank, if the card is lost, stolen, or in the possession of an unauthorized person.

All district credit cardholders will sign a statement agreeing to district terms and conditions for use and will follow all procedures set forth by the business services division for reporting and accounting for all credit card transactions.

April 8, 1999

ESCONDIDO UNION SCHOOL DISTRICT  
Escondido, California



**ESCONDIDO UNION SCHOOL DISTRICT  
CARDHOLDER AGREEMENT**

**I agree to use the bankcard provided by the Escondido Union School District only for actual and necessary business expenses incurred by me and only by me as cardholder in accordance with Escondido Union School District bankcard use policies and procedures. I understand and acknowledge that use of the card may not be delegated to anyone other than myself as cardholder.**

**I have read the Escondido Union School District bankcard usage policies and procedures and agree to abide by the procedures contained therein. I acknowledge that use of this card for any purpose other than Escondido Union School District approved business expenses is prohibited and is grounds for corrective action, up to and including termination. In addition, I must reimburse Escondido Union School District for such charges.**

**I agree to surrender the bankcard immediately upon retirement, termination, or upon request of an authorized representative of Escondido Union School District purchasing or business departments. I understand that use of the card after privileges are withdrawn is prohibited.**

**If the card is lost or stolen, I will immediately notify the issuing bank (US Bank – IMPACT Customer Service 800 227-6736) by telephone. I will confirm the telephone notification by mail or facsimile to the issuing bank (IMPACT Customer Service, P.O. Box 6346, Fargo, ND 58125-6436) with a copy to the Purchasing Department. I understand that failure to promptly notify the issuing bank of the theft, loss, or misplacement of the credit card could make me responsible for any fraudulent use of the card.**

**The use of this card is to be limited to \$2,000 or less per month.**

\_\_\_\_\_  
Signature of Cardholder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed /Printed Name of Cardholder

\_\_\_\_\_  
Cardholder Social Security Number

\_\_\_\_\_  
District's Approving Official

\_\_\_\_\_  
Date





**BOARD OF EDUCATION**

Joan Gardner  
John Laing, DDS  
Debbie Stauffer  
Linda Woods  
Mark Wyland

**SUPERINTENDENT**

Nicolás M. Retana, Ph.D.

**EXCERPT FROM BOARD MINUTES**

The following is an excerpt from the minutes of a regular meeting of the Board of Education of the Escondido Union School District, held on April 8, 1999, with all members present, except Debbie Stauffer.

Adopt new BP 3314.3, District Credit Card Usage, with accompanying administrative regulation.

I hereby certify the above to be a true and correct copy of the minutes as indicated.

A handwritten signature in black ink, appearing to read "Nicolás Retana", is written over a horizontal line. The signature is fluid and cursive.

Nicolás Retana, Ph.D., Secretary

**OFFICE LOCATION**

1330 E. Grand Ave.  
Escondido, CA 92027  
Tel (760) 432-2400  
Fax (760) 745-8896  
[www.escusd.k12.ca.us](http://www.escusd.k12.ca.us)

**Business and Noninstructional Operations**

BP 3314.3

**CREDIT CARD ACCOUNTS AND USAGE**

The superintendent or designee is authorized to augment purchasing procedures by opening and maintaining credit card accounts for use by board, cabinet, purchasing department, and other staff members as identified by the superintendent or designee. The superintendent or designee 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 Board of Education.

*Legal Reference:*

EDUCATION CODE

*39656 Delegation of powers to agents; approval or ratification of contracts by governing board*

*39657 Delegation of authority to purchase supplies and equipment; limitations on expenditures; review; personal liability*

Policy  
Adopted: April 8, 1999

**ESCONDIDO UNION SCHOOL DISTRICT**  
**Escondido, California**

## **Business and Noninstructional Operations**

AR 3314.3

### **CREDIT CARD USAGE**

District credit card accounts may be activated for board, cabinet, purchasing department, and other staff members identified by the superintendent or designee and be available for use during district travel for items that cannot be paid for by the regular purchase order procedures or in advance (i.e.: meals). A card held by the Manager/Purchasing and Distribution, or the District Buyer in the absence of the Manager, may be used when means currently available to make purchases or secure advance travel and conference reservations may not be adequate due to time constraints or other reasons. Routine air travel, hotel, car rental and purchases, where possible should be handled through existing purchase order procedures.

Maximum indebtedness at any time for each card will be \$2,000 for board members, and cabinet, and other staff members identified by the superintendent or designee. A \$20,000 limit shall be assigned to the card held by the Manager/Purchasing and Distribution.

All credit cards, other than those assigned to purchasing department personnel, will be maintained by the superintendent's secretary and will be checked out by the secretary as needed to the cardholder.

Every cardholder shall agree to all terms and conditions established by the district. The credit card may not be used for personal items or charges. The cardholder is personally responsible for guaranteeing that all charges are for appropriate district expenses, that purchases are within budget limits, and that the purchase does not violate any other law, regulation, or policy of the Board of Education. Neither the bank nor the district assumes responsibility for non-district purchases. The cardholder shall under no circumstances use the district credit card for any inappropriate purchase. The cardholder shall immediately notify the Assistant Superintendent, Business Services, and the authorizing bank, if the card is lost, stolen, or in the possession of an unauthorized person.

All district credit cardholders will sign a statement agreeing to district terms and conditions for use and will follow all procedures set forth by the business services division for reporting and accounting for all credit card transactions.

April 8, 1999

**ESCONDIDO UNION SCHOOL DISTRICT**  
**Escondido, California**

PURCHASE ORDER FOLLOW-UP

VISTA USD PURCHASING  
1234 ARCADIA AVENUE  
VISTA, CA 92084  
(760) 726-2170 EXT. 2216  
FAX (760) 630-0196

Date: 1/31/07

To: TURNER'S TRUCK FLEET  
P O BOX 300908  
ESCONDIDO CA 92030

Tel #: (760) 727-3021  
Fax #: (760) 727-9454

Re: PO #701155 Dated: 7/17/06

PURCHASE ORDER FOLLOW-UP

DEAR VENDOR,

OUR RECORDS INDICATE THAT THE FOLLOWING ITEMS HAVE NOT BEEN RECEIVED ON THE ABOVE REFERENCED PURCHASE ORDER. PLEASE VERIFY WITH YOUR RECORDS AND NOTIFY US, IN WRITING (FAX OR MAIL), OF THE SHIPPING DATE FOR EACH ITEM.

IF YOU HAVE ONLY RECENTLY SHIPPED THE ITEMS, AND YOU FEEL THEY COULD HAVE CROSSED IN THE MAIL WITH THIS FOLLOW-UP, PLEASE DISREGARD THIS REQUEST.

THANK YOU,

PURCHASING DEPARTMENT

NOTE: OUR WAREHOUSE/SHIPPING ADDRESS IS:  
4680 NORTH AVENUE  
(1ST REAR BAY)  
OCEANSIDE, CA 92056

OUR MAILING ADDRESS IS AT THE TOP OF THE PAGE

PURCHASE ORDER #701155

Site: PUR

VISTA USD PURCHASING  
1234 ARCADIA AVENUE  
VISTA, CA 92084  
(760) 726-2170 EXT. 2216  
FAX (760) 630-0196

PO Date: 7/17/06

Received Date:

Days Overdue: 29

PO Amount: 2,403.44

Line Items: 1

Dollar Amount Overdue: 2,403.44

Line Items Overdue: 1

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Line Items For PO # 701155

Page: 1

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-- Quantities --

No.	Ordr	Rcvd	Out	UOM	Description	Unit Price
1	1	0	1	EA	REPAIR DAMAGE TO UNDERCARRIAGE OF BUS #60 PER ATTACHED ESTIMATE	2,403.44

#### **Delivery Schedules**

All materials and supplies orders shall be shipped to the District warehouse located at 4680 North Avenue, Oceanside, CA 92056 unless otherwise indicated on the purchase order. The P.O. number must appear on all packages and packing slips. Vendors should strive to meet all specified delivery schedules contained on purchase orders. If for any reason, shipments cannot be accomplished as promised or as required, the Purchasing department should be notified of the situation as soon as possible. Items remaining undelivered after 60 days of P.O. date may be cancelled.

#### **Billing, Invoicing, and Payments**

Invoices should be mailed promptly after delivery to Vista Unified School District, Attn: Accounts Payable, 1234 Arcadia Avenue, Vista, CA 92084. Invoices should be submitted in triplicate referencing the appropriate Purchase Order number, otherwise, payment will be delayed. All school purchases are subject to state sales tax. Vendors can normally expect payment within 30 days of billing provided that proper purchasing procedures have been followed.

#### **MSDS**

Vendors are required to provide Material Safety Data Sheets (MSDS) from the manufacturer for all products that are hazardous as defined by California Code, Title 8, General Industry Safety Orders, Section 5194). MSDS MUST accompany the shipment of hazardous materials or payment of invoice may be delayed.

#### **Staff - Purchasing and Warehouse**

Donna Caperton, Director, Purchasing  
(760) 726-2170 x 2965  
e-mail: [dcaperton@vusd.k12.ca.us](mailto:dcaperton@vusd.k12.ca.us)

Diana Johnson, Senior Buyer  
(760) 726-2170 x 2964  
e-mail: [djohnson@vusd.k12.ca.us](mailto:djohnson@vusd.k12.ca.us)

Jessica Kinder, Senior Buyer  
(760) 726-2170 x 2962  
e-mail: [jkinder@vusd.k12.ca.us](mailto:jkinder@vusd.k12.ca.us)

Carre Scivoletti, Purchasing Tech  
(760) 726-2170 x 2963  
e-mail: [cscivoletti@vusd.k12.ca.us](mailto:cscivoletti@vusd.k12.ca.us)

Mythe Huynth, Purchasing Tech  
(760) 726-2170 x 2962

Clarence Reese, Warehouse Supervisor  
(760) 726-2170 x 2975  
e-mail: [creese@vusd.k12.ca.us](mailto:creese@vusd.k12.ca.us)

## **Doing Business with Vista Unified School District**

## **A Vendor's Guide to Purchasing Policies and Procedures**

Vista Unified School District  
1234 Arcadia Avenue  
Vista, CA 92084  
(760) 726-2170  
Fax (760) 630-0196 Purchasing

### **Welcome to Vista Unified School District**

The Vista Unified School District is a public school entity encompassing approximately 38 square miles including most of the city of Vista, parts of the cities of Oceanside, San Marcos, Carlsbad and some unincorporated areas of the county. It is a major purchaser of numerous goods and services for its 26 schools, serving more than 25,000 students in grades K-12. The district currently includes 15 elementary school, four middle schools, two large comprehensive high schools, one charter school (6-12), two continuation high schools for students at risk, and two schools for the physically challenged (elementary and secondary). Two of the elementary schools are magnet schools, one for science, math and technology and the other for the visual and performing arts.

### **Purchasing Policy**

Vista Unified School District operates its business based on a centralized Purchasing Program. A Purchase Order (P.O.) properly numbered, signed and authorized by the Purchasing department is the only document by which the district obligates itself to a vendor. The Purchasing Department is the only department authorized to sign and issue purchase orders.

This policy is supported by the California Education Code, which requires that public school purchases have district approval prior to the receipt of goods and services. Vendors are strongly advised not to provide materials or services to the district without first obtaining an authorized purchase order from the purchasing Department. Purchases made in the name of district without a written

authorized P.O. may be considered a donation to the district and not an obligation of the district.

### **Vendor Contracts**

The district urges vendors to deal directly with the Purchasing Department on all purchasing related matters including sales calls, sales presentations, promotions, catalog distribution, returns, exchanges and substitutions. Vendors are discouraged from making sales calls directly at school sites and with district personnel. The district maintains a competitive environment in its approach to purchasing and suggests that vendors first contact the Director of Purchasing for direction and advice about making sales presentations. This will save time and minimize confusion as to proper roles and authority in the district's procurement process.

### **What does Vista Unified School District Buy?**

The needs of Vista Unified School District are very diverse. They include basic instructional materials for reading, writing, math, science, art and athletic supplies, to furniture, audio and video equipment, office equipment, maintenance services, custodial supplies, transportation equipment, vehicles, computer, printers and software. The Child Nutrition Services Department purchases food supplies, services and food service equipment. The district is also seeking services for equipment maintenance contracts, public works contracts, school construction, remodeling and site improvement.

### **New Vendors**

To be placed on the district's vendor or bidder's list, request a Bidder Application from the Purchasing Department. Complete the form with at least the following information: business name, address, telephone and FAX number, e-mail address, product(s) or services offered, contact persons, a line card, business ownership certification (i.e. minority, women, or disabled veteran owned) and W-9. Return the completed form to the attention of Director of Purchasing at 1234 Arcadia Avenue, Vista, CA 92084.

### **Bids - Formal and Informal**

Formal bidding procedures are required for the purchase of materials and/or services exceeding amounts specified by law (which is currently specified at \$65,100 for materials and supplies and \$15,000 for public works services). This bidding process requires bidders to attend a bid conference and submit bids to the Purchasing Department in sealed envelopes at a specified time and date. Formal bids are primarily advertised in the legal section of the North County Times. Minority, women, and disabled veteran owned businesses are strongly encouraged to participate in this process. The district awards bids to the lowest, responsive, responsible bidder and reserves the right to waive any information and reject any and all bids offered. Informal quotes, bids or proposals for materials and/or services may be requested and received in writing by mail, e-mail, facsimile, and/or verbally such as by telephone. Informal bids apply to purchases below the formal bidding limits.

**STAFF**

619.644.8051

Guiselle Carreon  
Director of Purchasing  
[gcarreon@sdcoe.net](mailto:gcarreon@sdcoe.net)

619.644.8136

David Tomaino  
Contracts Specialist  
Bond Services  
[dtomaino@guhsd.net](mailto:dtomaino@guhsd.net)

619.644.8048

Pamela Garrett  
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[pgarrett@guhsd.net](mailto:pgarrett@guhsd.net)

619.644.8045

Lorrie Froehlich-Davis  
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[lfroehli@guhsd.net](mailto:lfroehli@guhsd.net)

619.644.8044

Linda Sauter  
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[lsauter@guhsd.net](mailto:lsauter@guhsd.net)

619.644.8046

Becky Wilkins  
Buyer II  
[bwilkins@guhsd.net](mailto:bwilkins@guhsd.net)

619.644.8052

Melissa Wamsley  
Office Assistant  
[mwamsley@guhsd.net](mailto:mwamsley@guhsd.net)

619.460.0963

Fax:



Grossmont Union High School  
District  
Purchasing Department

Grossmont Union High School District  
1100 Murray Drive, El Cajon CA 92020  
P.O. Box 1043, La Mesa CA 91944

## 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 Grossmont UHSD.
- 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 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 Grossmont Union High 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:

619-644-8052  
7:30 a.m. to 4:30 p.m. Mon - Fri

### • **Terms and Conditions**

Terms and Conditions for Purchase orders are available on line at the Purchasing Department website at [www.guhsd.net](http://www.guhsd.net)

### • **Bids & RFPs**

The District routinely solicits bids for public works projects. The GUHSD has opted in to the California Uniform Public Construction Cost Accounting Act allowing it to use the following bid limits:

\$0 - \$30,000 Informal Quotes  
\$30,001 - \$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 \$78,900 (cumulative) or may solicit bids using the formal competitive process.

Some services are subject to the \$78,900 threshold.

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 GUHSD 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.





**Vista Unified School District: TERMS, CONDITIONS AND INSTRUCTIONS**

**This order is subject to the following terms and conditions, and by accepting the order or any part thereof, the Seller agrees to and accepts said terms and conditions.**

GENERAL	SHIPPING AND DELIVERY	WARRANTIES
<p>1. <b>DEFINITIONS:</b> The term Purchaser means Vista Unified School District, and the term Seller means the person, firms, or corporation from whom the merchandise or item has been ordered.</p> <p>2. This order is subject to the approval of the Board of Education of the Vista Unified School District.</p> <p>3. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser.</p> <p>4. Seller may not assign this order without Purchaser's prior written consent.</p> <p>5. Time is of the essence of this order.</p> <p>6. All orders are considered to be net 30 unless otherwise approved by the Purchasing Department.</p> <p><b>COMPLIANCE</b></p> <p>7. No waiver of a breach of any provision of this order shall constitute a waiver of any other breach of such provision or of any other provisions.</p> <p>8. Purchaser may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary.</p> <p>9. Specifically written terms, conditions and instructions relating to advertised bids and written or verbal offers from Sellers take precedence over these printed terms, conditions and instruction where conflict exists and this Purchase Order form is a part of the contract documents.</p> <p><b>INVOICES, PACKING SLIPS</b></p> <p>10. Invoices must be itemized, showing quantity, unit price, labor, material and State taxes.</p> <p>11. <b>Purchase order number must appear on all invoices, packing slips, packages, and correspondence.</b></p> <p>12. Seller will send separate triplicate invoices for each purchase order number.</p> <p>13. Enclose one packing slip, and mark the package in which the packing slip is enclosed.</p>	<p>14. If Seller cannot ship order without delay, notify immediately the Purchasing Department of that fact and of the probable date of delivery.</p> <p>15. Goods must be shipped as per instructions; otherwise, any extra handling charge will be billed back to Seller.</p> <p>16. Purchaser will not be responsible for any item delivered without Purchase Order.</p> <p>17. In the event of Seller's failure to deliver as and when Specified, Purchaser reserves the right to cancel this order or any part thereof without prejudice to its other rights, and Seller agrees that Purchaser may return part or all of any shipment so made and may charge Seller with any loss or expense sustained as a result of any such failure to deliver.</p> <p><b>PRICE</b></p> <p>18. No deviation in price or substitution in kind will be permitted. Permission in writing should be secured or a new Purchase Order requested if any change is necessary.</p> <p>19. All items must be prepaid to point of destination. Exceptions are subject to the approval of the District.</p> <p>20. No boxing, packing or cartage charges will be allowed by Purchaser unless specifically authorized in writing.</p> <p>21. It should be understood that the cash discount period to Purchaser will date from the receipt of the invoice or the date of the receipt of the item, whichever is the later date.</p> <p>22. If price is omitted on order, except where order is Given in acceptance of quoted prices, it is agreed that Seller's price will be the lowest prevailing market price, and in no event is this order to be filled at higher prices than last previously quoted or charged without Purchaser's written consent.</p> <p><b>INSPECTION</b></p> <p>23. All items are subject to Purchaser's inspection within a reasonable time after arrival at the ultimate destination. If upon inspection any item is found to be unsatisfactory, defective, or of inferior quality or workmanship, or fails to meet the specifications or any other requirements of this order, Purchaser may return such items to Seller at Seller's expense. Payment for item prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective item. Seller shall reimburse Purchaser for any amount paid by Purchaser on account of the purchase price prior of such returned item and any costs incurred by Purchaser in connection with the delivery or return of such item.</p>	<p>23. Seller warrants that the item will confirm to its description and fit of the for known purchase for which it is sold. This warranty is in addition to any express warranty or service guarantee given by Seller to Purchaser.</p> <p>25. Seller warrants that the item is free and clear of all liens and encumbrances and that Seller has a good and marketable title to same at the time title passes to Purchaser.</p> <p>26. Seller shall comply with all State, Federal, and local laws, regulations, or orders applicable to the purchase, manufacturing, processing, construction, installation, servicing and delivery of the item. In the event of failure to comply with applicable laws, regulations, or orders, the Seller shall reimburse the District for any loss incurred by Seller's failure to comply.</p> <p>27. In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application therefor, Seller shall indemnify and save harmless Purchaser from any and all loss, cost, or expense on account of any and all claims, suits, or judgments on account of the use of such article in violation of rights under such patent, copyright or application.</p> <p><b>LIABILITY OF SELLER</b></p> <p>28. In the event any article sold and delivered hereunder shall be defective in any respect whatsoever, Seller shall indemnify and save harmless the Purchaser from all loss or the payment of all sums of money by reason of all accidents, injuries, or damages to persons or property that may happen or occur in connection with the use of such article and are contributed to by said defect condition.</p> <p>29. Seller will hold Purchaser harmless from any or all damages or liability arising out of death or injuries to persons or damage to property proximately caused by the negligence of Seller or his agents, servants or employees.</p> <p>30. Seller shall be responsible for any and all loss or damage to the item until delivered to Purchaser at the FOB point specified on the face of this order.</p>



GROSSMONT UNION HIGH SCHOOL DISTRICT  
 P.O BOX 1043 LA MESA, CALIFORNIA 91944-1043  
 TELEPHONE (619) 644-8052 - FAX (619) 460-0963

**PURCHASE ORDER NO.**

DATE:

INVOICE TO ABOVE ADDRESS / P.O. NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND DELIVERY SLIPS.  
 WAREHOUSE HOURS: Monday - Friday 7:00 a.m. - 3:00 p.m.

TO:

SHIP TO:

PHONE:

FAX:

DATE REQUIRED	BID/QUOTE #	CONFIRMED	VENDOR NO.	SHIP VIA	F.O.B
TERMS OF PAYMENT	REQ. NO.	REQUISITIONER		BUYER	
ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED AMT
Terms and conditions are available upon request or online at: <a href="http://www.guhsd.net/GUHSD/depts/busserv/purchasing">http://www.guhsd.net/GUHSD/depts/busserv/purchasing</a> or you may go to <a href="http://www.guhsd.net">www.guhsd.net</a> , select Departments, select Purchasing				AUTHORIZED SIGNATURE <sup>226</sup>	

## GROSSMONT UNION HIGH 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 Grossmont Union High 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.
- 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 Grossmont Union High 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 Grossmont Union High 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, or employees in any such action suit, or other proceedings as a result thereof.

## **PURCHASING RELATED WEBSITES**

### ***Contractor's License Information***

California States License Board - General Webpage

<http://www.cslb.ca.gov/>

Law References

<http://www.cslb.ca.gov/generalinformation/library/laws/>

License Classifications

<http://www.cslb.ca.gov/GeneralInformation/Library/LicensingClassifications/>

License Check

<https://www2.cslb.ca.gov/OnlineServices/CheckLicense/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](http://www.dir.ca.gov/dlsr/statistics_research.html)

### ***Disable Veterans Business Enterprise***

Small Business & DVBE Information

<http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/pd>

### ***Erate & Teleconnect***

California Teleconnect

<http://www.cpuc.ca.gov/puc/telco/public+programs/CTF/>

Education Technology K-12 Voucher Program

<http://www.cde.ca.gov/ls/et/st/etv.asp>

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 - Dairy Pricing

[http://www.cdfa.ca.gov/dairy/prices\\_main.html](http://www.cdfa.ca.gov/dairy/prices_main.html)

Federal Publications Search (CFRs)

<http://www.gpo.gov/fdsys/pkg/CFR-2001-title7-vol1/content-detail.html>

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

<http://wwwstatic.kern.org/gems/fcmat/asbmanual2009.pdf>

Business Search

<http://kepler.sos.ca.gov/cbs.aspx>

California Department of General Services

<http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/pd>

California Uniform Construction Cost Accounting Commission

[http://www.sco.ca.gov/ard\\_cuccac.html](http://www.sco.ca.gov/ard_cuccac.html)

SDCOE Commercial Warrants Claims Manual

[http://www.sdcoe.net/business2/dfs/cw/com\\_war\\_manual.pdf](http://www.sdcoe.net/business2/dfs/cw/com_war_manual.pdf)

Systems for Award Managed Excluded Parties List (Debarment Listing for Federally Funded Purchases)

<https://www.epls.gov/>

### ***Insurance***

A.M. Best

<http://www3.ambest.com/ratings/entities/search.aspx?>

California Insurance Company Profiles

<http://www.insurance.ca.gov/0100-consumers/0030-licensee-info/0010-search-company-profile/>

Driver Alliant Insurance Requirement in Contracts Procedures Manual

<http://www.alliantinsurance.com/Industry-Solutions/Public-Entity/Documents/IRIC.pdf>

Federal Department of Treasury's Listing of Approved Sureties

<http://fms.treas.gov/c570/c570.html>

***Legal Codes***

California Law

<http://www.leginfo.ca.gov/calaw.html>

Fair Political Practices Commission

<http://www.fppc.ca.gov/index.php?id=37>