



Contract Review Guidelines

The District is liable for its debts and contracts.

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CONTRACT REVIEW GUIDELINES

BACKGROUND

The District is liable for its debts and contracts.

Government Code § 35200 states that “The governing board of any school district is liable as such in the name of the district for all debts and contracts, including the salary due any teacher, not made in excess of the school moneys accruing to the district and usable for the purposes of the debts and contracts during the school year for which the debts and contracts are made. The district shall not be liable for debts and contracts made in violation of this section.”

GOAL

These guidelines are intended to help your District review contracts so that you will know what you are signing and why you are signing before you sign them. It is also good practice to periodically review existing District contracts—these include, but are not limited to, purchase orders, consulting agreements, employment contracts, leases, construction contracts, transportation agreements, charter school agreements, and food services agreements—to determine whether or not they still meet your District’s needs.

WHAT IS A CONTRACT?

A contract¹ is an agreement or a manifestation of mutual assent on the part of two or more persons which creates obligations that are enforceable by law.² The basic elements of every contract are:

1. **mutual assent** (each party to a contract must agree to the contract’s obligations, terms, and conditions³),
2. **consideration** (each party to a contract must receive a benefit from the contract⁴),
3. **capacity** (each party to a contract must be legally able and authorized to enter into the contract), and

¹ California Civil Code defines a contract as an agreement to do or not to do a certain thing (Civil Code § 1549).

² An executed contract creates an obligation or legal duty, enforceable in an action at law (Civil Code §§ 1427, 1428.2).

³ Mutual consent is usually accomplished through an offer and acceptance. An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his or her assent to that bargain is invited and will conclude it. A contract is made when one party makes a proposal or offer that is accepted by another party.

⁴ Consideration is any act or forbearance which is of benefit to the promisor or detriment to the promisee (Civil Code §1605). A contract is defined as an agreement which includes sufficient consideration to do, or refrain from doing, a particular lawful thing (14 Cal.Jur.3d, Contracts, § 1, p. 198-199). A promise unsupported by consideration has no binding force or effect and is not enforceable at law. It is the benefit that is given or the detriment suffered that is the consideration for the act or promise of another. The consideration, if it consists of a benefit, must have some value.

4. **legality** (the mutual obligations, conditions, and terms of the contract must all be legal⁵).

In California, the element of consideration can be satisfied by a valid substitute, promissory estoppel.⁶ Remedies for breach of contract might include general damages, consequential damages, reliance damages, or specific performance. Contracts are promises that are enforceable by law.⁷ The law provides remedies if a promise is breached or recognizes the performance of a promise as a duty. Contracts arise when a duty does or may come into existence, because of a promise made by one of the parties. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Adequate consideration is a benefit or detriment which a party receives which reasonably and fairly induces them to make the promise/contract. For example, promises that are purely gifts are not considered enforceable because the personal satisfaction the grantor of the promise may receive from the act of giving is normally not considered adequate consideration. Certain promises that are not considered contracts may, in limited circumstances, be enforced if one party has relied to his detriment on the assurances of the other party.

Contracts are mainly governed by state statutory law, common law, and private law. Private law principally includes the terms of the agreement between the parties who are exchanging promises. This private law may override many of the rules otherwise established by state law. Statutory law may require some contracts be put in writing and executed with particular formalities. Otherwise, the parties may enter into a binding agreement without signing a formal written document. Most of the principles of the common law of contracts are outlined in the *Restatement of the Law Second, Contracts*, published by the American Law Institute. The *Uniform Commercial Code*, whose original articles have been adopted in nearly every state, represents a body of statutory law that governs important categories of contracts. The main articles that deal with the law of contracts are Article 1 (General Provisions) and Article 2 (Sales). Sections of Article 9 (Secured Transactions) govern contracts assigning the rights to payment in security interest agreements. Contracts related to particular activities or business sectors may be highly regulated by state and/or federal law. In 1988, the United States joined

⁵ The parties to a contract must be legally competent to enter into the contract (e.g., eighteen years of age), and the subject matter of the contract must be legal or lawful. If any part of a contract is unlawful, the entire contract is void. For example, a contract which includes the payment of interest above legal limits would be unlawful and unenforceable.

⁶ Promissory estoppel is the term used in contract law that applies where, although there may not otherwise be a enforceable contract, because one party has relied on the promise of the other, it would be unfair not to enforce the agreement.

⁷ A contract is a promise or set of promises for which the law gives a remedy or the performance of which the law in some way recognizes as a duty (Rest.2d, Contracts, § 1).

the *United Nations Convention on Contracts for the International Sale of Goods* which now governs contracts within its scope.

SCHOOL AND COMMUNITY COLLEGE DISTRICT CONTRACTS

The Education Code authorizes school districts and community college districts to enter into contracts. The governing board of the district is liable in the name of the district for all debts and contracts made in conformance with law (Education Code § 35200). Education Code sections 35160 and 70901 provide school districts and community college districts broad authority to initiate and carry on any program activity or to act in any manner which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which school districts are established. In addition, the governing board may execute any powers delegated by law to it by delegating to an officer or employee of the district any of those powers or duties.⁸

The next section displays, in tabular form, representative terms and conditions of contracts along with common errors incurred in the drafting and preparation of contracts. The left hand of the table lists broad contract categories (in **bold**) as well as specific contractual clauses within these broader categories. The right side of the table lists common errors and other failures in the preliminary drafting and preparation of contracts. This table can be used as a tool to assist in indentifying errors and in ensuring comprehensive consideration of each contractual clause. **Note, however, that this is not intended to be and is not a substitute for legal counsel in your District’s contract preparation and review.** If your District requires assistance in reviewing a contract, especially with respect to risk management, indemnification, and/or insurance implications, please feel free to contact an ASCIP risk services consultant at ascip_info@ascip.org or (562) 404-8029.

⁸ The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated. Education Code § 35161 states “*The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board, and may delegate to an officer or employee of the district any of those powers or duties. The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated.*”

CONTRACT REVIEW BASICS

Basic Contract Terms and Conditions	Most Common Errors in Drafting and Preparing Contracts
<p>The names of the parties</p> <ul style="list-style-type: none"> ✓ Legal Name/DBAs ✓ Independent Contractor Status ✓ Licensing Information ✓ Tax ID ✓ Legal Address 	<ul style="list-style-type: none"> ✓ Failure to clearly delineate the parties. ✓ Failure to clarify fictitious names and/or relationships of businesses so as to clearly indicate the responsible parties. ✓ Failure to indicate if the parties are individuals, sole proprietors, partnerships, or corporations. ✓ If either party uses a fictitious name, failure to clearly identify the other party by name and acknowledge the fictitious name (i.e., John Smith d/b/a Smith's Repairs). ✓ Failure to verify that all data of the other party is up to date, including social security number and/or federal identification number, address, and telephone number. ✓ Failure in recording a legal address by using a post office box number instead. ✓ If a contract involves activities requiring additional licensing or permits (i.e., asbestos abatement, transportation services, etc.), failure to include the license number/permit information in the contract. ✓ Failure to identify the parties consistently throughout the contract. ✓ Failure to explicitly identify the other party as an "independent contractor" or as an employee of the District. (Before a party is identified as an independent contractor, the district administrator should carefully analyze whether the independent contractor test is met. See http://www.irs.gov/taxtopics/tc762.html .)
<p>The dates or term of the contract</p> <ul style="list-style-type: none"> ✓ Term of Contract ✓ Renewals ✓ Signatures 	<ul style="list-style-type: none"> ✓ Failure to clearly define terms and conditions. ✓ Contract start and termination dates should be stated. ✓ Are the dates throughout the contract consistent as to the effective and termination dates? ✓ If the contract must be completed by a certain date, is that noted as a specific condition within the contract? ✓ Failure to indicate that, if applicable, contract is a renewal, amendment, or modification. ✓ If a renewal, is it being prepared prior to the expiration of the previous contract? (<i>If not, then a new contract must be completed.</i>) ✓ If an amendment, is the amendment completed prior to the termination of the contract? (<i>If not, no amendment is possible.</i>) ✓ Are the signatures dated prior to the effective of the services? (<i>If not, the other party is working without the benefit of a contract.</i>) ✓ Failure to properly attach or number all pages, including attachments, for identification (should the papers separate from the contract). ✓ If a corporation and an officer cannot sign, is there a certified resolution giving an individual the ability to sign on behalf of the officer and bind the corporation to the contract? (A resolution may not confirm signatory authority of a corporation to one person.) ✓ Are the titles of the signatories noted? ✓ Does the District administrator have a written delegation from the Board of Trustees of the District to sign contracts on behalf of the District?

Basic Contract Terms and Conditions	Most Common Errors in Drafting and Preparing Contracts
<p>The responsibilities and obligations of the parties</p> <ul style="list-style-type: none"> ✓ Duties and obligations of the parties ✓ Recitals ✓ Assignment of Antitrust Claims ✓ Ownership Rights ✓ Audit Provisions ✓ Warranty ✓ Compliance with Americans with Disabilities Act, Nondiscrimination/Sexual Harassment Clause ✓ Hold Harmless/ Indemnification Provision ✓ Insurance ✓ Patent, Copyright and Trademark Indemnity Amendments/ Modifications ✓ Integration, Severability ✓ Compliance with Law, Applicable Law ✓ Arbitration ✓ Severability 	<ul style="list-style-type: none"> ✓ Failure to explain the justification/reason for the contract. ✓ Inclusion of unacceptable terms and conditions in the contract, especially insurance. ✓ Failure to clearly define terms and conditions. ✓ Failure to reference attachments and/or exhibits in the contract or failing to carefully review them and/or include the attachments/exhibits with the contract. ✓ Making changes to the terms and conditions of the contract without a written amendment executed by the parties to the contract. ✓ Failure to clearly specify terms of the contract. ✓ Failure to clearly state contract's justification and purpose within the description of services requested (e.g., District is unable to provide this service, District does not have the equipment to provide this service.) ✓ Failure to attach, incorporate or reference other, required documents (e.g., request for proposal, response to the RFP and/or an estimate prepared by the other party.) ✓ Failure to state mandatory time frame for the completion, if applicable. ✓ Executing a contract exceeding five years (including renewals, original plus four renewals equals five years.)⁹ ✓ Failure to terms as to the place, time and method of payment. ✓ If for rental services of a hotel/motel or restaurant, failure to prohibit alcoholic beverage charges. ✓ If for rental/lodging/catering services, failure to specify that the charge will be based on a pre-confirmed number or the actual number of attendees. ✓ If a renewal, modification or amendment, failure to attach the original contract. ✓ Failure to attach all exhibits to the contract (If a public works contract, then all bid documents must be attached.) ✓ Failure to avoid arbitration clauses or alternative dispute resolution clauses <i>unless it is clearly in the best interest of the District.</i> ✓ Failure to mark all "blank" spaces in the contract as "not applicable" (i.e., N/A). ✓ Failure to initial all handwritten changes, amendments, modifications, and insertions by ALL signatories (If two signatures of the other party are required, both individuals must initial these items.) ✓ If a corporate seal is required on any document, failure to match the name on the seal with the other party's name as it appears on the contract. ✓ Failure to include an indemnification clause which indemnifies the District, its Board of Trustees, its officers, employees, volunteers, and agents. ✓ Failure to include insurance requirements that require the other party to obtain insurance. The type of insurance required, the minimum amount of insurance required, the provision of proof of insurance, and the requirement that the insurance be acceptable to the District should be included in the

⁹ Education Code §§ 17596, 81644 limit contracts for services to five years.

Basic Contract Terms and Conditions	Most Common Errors in Drafting and Preparing Contracts
	<p>insurance clause and reviewed, in advance, by the District's risk manager or an ASCIP risk services consultant. As appropriate, the other party should be required to name the District as an additional insured with proper endorsements.</p>
<p>The terms of payment</p> <ul style="list-style-type: none"> ✓ Cost of the Contract , Compensation/Expenses, Invoices, ✓ Payment, Taxes 	<ul style="list-style-type: none"> ✓ Failure to clearly define terms and conditions. ✓ Failure to clearly state any and all per diem expenses or travel expenses.
<p>The procedure for termination of the contract</p> <ul style="list-style-type: none"> ✓ Early Termination of Contract ✓ Assignability and Subcontracting ✓ Force Majeure¹⁰ ✓ Default 	<ul style="list-style-type: none"> ✓ Failure to clearly define terms and conditions.

CONTRACTING

Districts engage in five main types of contracts:

1. Employment contracts (including collective bargaining, benefits, and retirement),
2. Grants,
3. Leases and rental agreements,
4. Permits and easements, and
5. Purchase agreements and purchase orders.

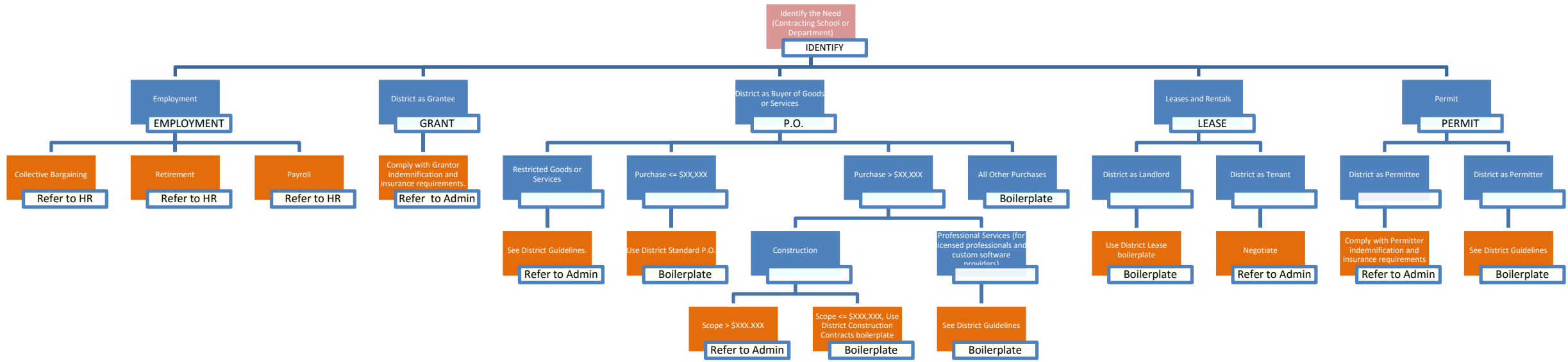
Employment-related contracts are highly specialized (and a subject to separate laws, regulation, and procedural guidelines). These are handled by the Human Resources Department.

The other four types of contracts are administered by the Financial or Administrative Services Department.

On the next page, a contract management flowchart presents a typical staff responsibility allocation of contracts by type and scope of contract.

¹⁰ In the absence of a formal force majeure term, Civil Code § 1511-1515 applies.

DISTRICT CONTRACT MANAGEMENT FLOWCHART



PURCHASING POLICY AND PROCEDURES

The primary objective of a Purchasing Policy and Procedures to provide reference information on “HOW TO DO IT”, to assist in answering the day to day questions of purchasing employees, 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.)

PURCHASING PHILOSOPHY

How it can help you and your District?

As the District becomes 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 District purchasing department have numerous advantages. For example; written statements:

- Spell out the responsibilities and authority of purchasing.
- Appraise other departments of purchasing's prerogatives and thus avoid misunderstandings and friction.
- Help promote consistent and fair relations with vendors, old or new.
- Facilitate uniform action by all purchasing personnel in dealing both within and outside the District. In particular, a centralized purchasing function facilitates the use of boilerplate contracts which contain standardized requirements, including, but not limited to, indemnification language and insurance requirements.
- Standardize routing purchasing procedures and thus relieve the need for close supervision.
- 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 District 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.
8. 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 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 District and the employee.
 - b. The contract is between the 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 District and a corporation in which any employee is the owner or holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock.
7. The Purchasing Department shall seek competent counsel from its colleagues regarding matters of common interest.
8. 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.

9. 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.
10. 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.
11. 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.
6. Visiting the suppliers at their places of business shall be a regular part of purchasing practice.

E. PURCHASING PROCEDURES (Board 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 \$86,000 ([updated for 2015](#)) for materials or supplies, showing the recommendations of the Purchasing Department shall be submitted to the Board for approval.

H. BID PROCEDURES¹¹

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 \$86,000] 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.”

¹¹ 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 (\$86,000 for 2015) could be utilized. For instance, if the District were 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 the District were 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.

3. For purchases less than \$86,000, 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 A.2.a.-e. of the "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

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

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.

J. TRADE-INS OF EQUIPMENT

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 the 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.

MODEL DISTRICT CONTRACTS BY TYPE OF SERVICE

ASCIP has prepared some model District contracts which can serve as templates for your District’s contracts or as models for various contract clauses that you may find useful in your contracts. This listing of model contracts is not exhaustive, but intends to serve as a cross section of the variety of contracts with third parties in which your District may choose to enter.

The model contracts are:

- [Model Before/After School Program Provider Contract](#),
- [Model Construction Contract](#),
- [Model Consultant Contract](#),
- [Model Food Services Contract](#),
- [Model Owner Controlled Insurance Program \(OCIP\) Construction Contract](#),
- [Model Simple, Triple Net Lease \(wherein the District is Lessor\)](#),
- [Model Charter School Memorandum of Understanding](#),
- [Model Software Procurement Contract](#), and
- [Model Transportation Services Contract](#)