

BASIS FOR OPERATION

Purchasing is the responsibility of the governing board; the prudent expenditure of tax dollars is a major policy function. All purchase orders and formal contracts must be approved by the board, with specific approvals indicated in the official board minutes. Each transaction between the school district and any other entity or person involving property transfer or the rendering of a service is a contract, and all contracts are subject to the approval of the governing board.

Clear guidelines should be established by the board through the adoption of board policies, administrative regulations, and a code of ethics. The district's chief administrative officer directs the development and control of procedures and forms that implement the purchasing policies established by the governing board.

LEGAL PROVISIONS

Governing boards may delegate the power to contract to the district superintendent or to a designated agent. However, contracts pursuant to such delegation shall not be an enforceable obligation against the district until they have been ratified by the governing board. Delegated authority may be limited with regard to time, money, or subject matter or may constitute a blanket authorization. [EC §§ 17604-5, 35161, 81655-6]

Conflict of interest by board members must be avoided. [EC §§ 35230, 72530 et seq.; GC § 1090 et seq.]

School and community college districts must receive formal competitive bids for equipment, materials, supplies, non-construction services and maintenance to be furnished that exceed the current bid threshold of \$69,000. Districts must also receive formal competitive bids for a public project involving an expenditure of \$15,000 or more. Formal competitive bids must be presented under sealed cover. [PCC §§ 20111, 20651]

Contracts involving any work, project, service or purchase may not be split or separated into smaller work orders for the purpose of evading the competitive bid limit requirement. [PCC §§ 20116, 20657]

Contracts may not prohibit a school district employee from disparaging the goods or services of the party contracting with the governing board. [EC § 35182.5(c)(2)]

Continuing contracts shall not exceed five years for work to be done, for services to be performed, and for equipment to be furnished, sold, built, installed, or repaired. Continuing contracts shall not exceed three years for materials or supplies to be furnished or sold to the district. The term of any lease or lease-purchase shall not

exceed ten years for equipment or service systems. Relocatable structures or permanent school buildings may be leased or lease-purchased under specified conditions. [EC §§ 17400 et seq., 17452, 17596, 81526, 81552, 81644]

Bids and contracts being let for public projects require that all contractors for projects of \$500 or greater have a California contractor license suitable for the work to be done (see Additional Resources). Additionally, all public projects of \$1,000 or greater require the contractor and all subcontractors to pay prevailing wages to all workers employed by them (see Additional Resources). [B&PC §§ 7048, 7055-7059; LC §§ 1771-1771.5, 1775]

The legal requirements of obtaining bids must be observed for purchases of materials such as diesel fuel, propane, oil, or gasoline. The annual cumulative total cost of such material received during a school or college year cannot exceed the competitive bid limit without a formal competitive bid being let.

Bids must be obtained for transportation contracts exceeding \$10,000. [EC § 39802]

Continuing contracts to furnish transportation to pupils to and from school may be made for a term not to exceed five years and may be renewed. Continuing contracts may be made for the lease or rental of school buses, not to exceed five years. If such a contract provides an option for the district either to purchase the buses or to cancel the lease at the end of each annual contract period, the contract may have a term not to exceed ten years. [EC § 39803]

A school or community college district may repair, alter, add, paint, repaint, decorate, build, and improve upon school buildings, equipment or grounds by day labor or force account whenever the total hours on the job do not exceed 350 hours. A school district with a minimum average daily attendance of 35,000 or greater or a community college district with a student full-time equivalent of 15,000 or greater may also make specified repairs and perform defined maintenance by day labor or force account up to 750 hours or a cost of material not to exceed \$21,000. Day labor includes the use of temporary or permanent maintenance personnel. [PCC §§ 20114-5, 20655-6]

In an emergency, when any repairs, alterations, work, or improvement are 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 may, by unanimous vote, with the approval of the county superintendent of schools, contract for the performance of labor and furnishing of materials or supplies without advertising for bids or authorize the use of day labor or force account. [PCC §§ 20113, 20654] An emergency means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. [PCC § 1102]

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, and periodicals may be purchased in any amount needed without taking formal competitive bids or advertising for bids. [EC § 81651; PCC § 20118.3]

Districts may contract with any public corporation or agency without advertising for bids to lease data processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property as authorized by law. [PCC §§ 20118, 20652]

The governing board of a school district may sell advertising, products, or services on a nonexclusive basis. The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program. [EC § 35182.5(f)-(g)]

Surplus property may be purchased from federal and state government agencies under specified conditions without advertising for bids or taking estimates. [EC §§ 17595, 17602, 81653]

Purchases may be paid from a revolving cash fund as prescribed by law and regulations of the governing board. [EC § 42820]

Legal requirements for reporting and paying state use tax and state sales tax must be met (see Additional Resources). (See also Commercial School Orders.)

No county superintendent of schools may hire as a consultant any entity in which he or she has a financial interest. [EC § 1281(a)]

If the county superintendent of schools enters into a consultant contract for twenty-five thousand dollars (\$25,000) or more and the contract constitutes a budget revision, it shall be incorporated in the next interim financial report or other board report when the report is submitted to the county board of education for discussion and approval at a regularly scheduled public meeting of the county board of education. [EC § 1281(b)]

PURCHASING PROCEDURES

Governing boards should establish regulations that address purchasing. Care should be taken to ensure that all purchases fall within the scope of the district's officially adopted budget. The following are guidelines for purchasing procedures:

1. The chief administrative officer should develop approved procedures related to the purchase of regular and special materials and services. Procedures should include the sources of supplies, the channels through which requisitions will be generated, and the manner by which purchase orders will be issued.

2. A designated staff member or an alternate must sign purchase orders.
3. The minutes of the governing board must include approval or ratification of purchase orders.
4. A standard list of school supplies for the district should be established.
5. Annual fixed price contracts should be competitively bid, as applicable, for equipment, materials, and supplies.
6. Contracts should be drawn for services.

General Recommendations

Careful consideration should be given to the following suggestions:

1. The price advantages of annual fixed price contracts often offset the cost of maintaining central storage facilities. Materials generally stocked in central storage facilities include items such as instructional, office, and custodial supplies, replacement parts, etc. The district should carefully evaluate, at least annually, the purchase and subsequent use of these stock items to ascertain whether the maintenance of the storage facility is substantiated.
2. A system should be developed for the replacement of old or obsolete equipment. The district should consider purchasing new equipment that has been designed with environmentally preferable attributes. (See Additional Resources)
3. Procedures should be followed to ensure that no federal excise tax is paid. When purchasing applicable items, the bid or quotation documents should specifically exclude the payment of excise taxes. A Federal Excise Tax Exemption Certification form should be submitted to the vendor, as requested. (See also Commercial School Orders.)

Requisitions and Purchase Orders

Requisitions should be initiated by the user's department, be properly identified, and receive all of the required approvals. Two types of requisitions are suggested for use by districts: 1.) stores, warehouse, and stock items; and 2.) nonstock items.

A purchase order is a contract that is used to place all orders, including orders on continuing contracts and orders derived from oral or written bids. Information specified on the purchase order should include the quantity, unit, unit price, item description, total price, state sales tax, discounts, delivery date, and delivery instructions. Additionally, general or special conditions of the purchase should be included.

Purchase order follow-up procedures are necessary when numerous purchases are made by a district. These may include standard form letters of inquiry regarding late shipments, overages, shortages, substitutions, damages, or nonreceipt of invoices.

Informal Bid

Three bids should be obtained, whenever possible, to secure the most favorable prices when formal competitive bidding is not required. Informal bids may be obtained by mail, telephone, fax, or electronic mail. [PCC §§ 20111, 20651]

Informal written bidding is generally requested for supplies, equipment, services, and public projects that approach the dollar limits specified for formal competitive bidding by law or district policy. The request for bid should set forth standard and special conditions under which the acquisition is to be made. [PCC §§ 20116, 20657]

The district shall publish annually a notice inviting contractors to register to be notified of future informal bidding projects and shall notify contractors on the informal bidding list in any manner the district deems appropriate. [PCC §§ 20116, 20657]

Formal Bid

Bids for purchases in excess of the formal competitive bid thresholds of \$69,000 for equipment, materials, or supplies, non-construction services, and repairs including maintenance, and \$15,000 for a public project must be obtained from vendors/contractors through a formal competitive bidding process. Public works (construction) bids should be executed on documents approved by district counsel. Sample documents, Construction Contract Documents 2006, are available online from the San Diego County Office of Education (see Additional Resources). [PCC §§ 20111, 20115, 20651] (See also Facilities Planning.)

For the purpose of securing formal competitive bids, the governing board must publish a notice at least once a week for two weeks in a newspaper of general circulation published in the district, or if there is no such paper, then in a newspaper of general circulation in the county. The notice may also be posted on the district's Web site or through an electronic portal. The notice shall state the work to be done or materials or supplies to be furnished and indicate the date, time, and place bids must be received. Whether or not bids are opened exactly at the time fixed in the notice, a bid shall not be received after that time. [PCC § 20112] The date and time shall be extended by no less than 72 hours if a material change is issued in the invitation to bidders for any public work or improvement less than 72 hours prior to bid closing. [PCC § 4104.5]

Bids may be submitted either electronically or on paper. The bid form must be filled out without deviation from the requested data. The board's decision to award a bid or reject all bids should be announced at a designated date and time.

Public Contract Code section 20118 authorizes governing boards, under specified conditions, to purchase or lease personal property without advertising for bids.

Bonds

A district shall require that each formal competitive bid for public projects shall be accompanied by a satisfactory bidder's security in an amount established by the governing board. The bid security is to be given as a guarantee that the bidder shall execute the contract if awarded. [PCC § 20111]

A faithful performance bond for 100 percent of the contract amount may also be required. The performance bond ensures that the contractor will faithfully perform and complete the contract.

A payment bond for 100 percent of the contract amount is required of every original contractor to whom a public works contract is awarded for an expenditure in excess of \$25,000. [CC §§ 3247-8]

Specifications

A school district should develop specifications identifying the type of products or services required to assist the bidding by interested vendors and contractors. Specifications may include minimum safety and quality standards. It is also required that all contractors hired for public projects in excess of \$500 provide proof of a contractor's license and provide commercial general liability, property damage, and automobile insurances prior to the commencement of projects. [B&PC § 7048]

School districts are prohibited from drafting specifications for bids for construction, alteration, or repair of public works in such a way as to limit bidding. If the specifications designate a brand name recognized by the particular industry, notation should be made indicating that this item "or equal" is acceptable, and, if known, at least one brand name of comparable quality should be listed. [PCC § 3400]

Only one brand or trade name need be specified if the governing board or its designee makes a finding that the designation is for one of the following purposes: (1) to obtain a necessary item that is only available from one source; (2) to field test or experiment to determine the product's suitability for future use; (3) to match other products in use on a particular public improvement either completed or in the course of completion; (4) in order to respond to a declared emergency. [PCC § 3400]

State requirements for equipment and structural standards must be incorporated in district specifications.

Extract of Public Works Contract Award

A district, as an awarding agency whose construction contract falls within the jurisdiction of Labor Code section 1777.5, shall send a copy of the award to the Division of Apprenticeship Standards, California Department of Industrial Relations within five days of the award. Submission of Form DAS 13, Extract of Public Works Contract Award, will satisfy this requirement (see Exhibit 1 and Additional Resources). [LC §§ 1773.3, 1777.5, 1777.7] The provisions of Labor Code sections 1776 and 1777.5 referenced in the extract are included in Articles 31 and 134 of the General Conditions section of the sample Construction Contract Documents available online from the San Diego County Office of Education (see Additional Resources).

Contracts for Electronic Products and Services

The school district governing board may authorize procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus through competitive negotiation. The district must use an RFP (request for proposals) process and make every effort to ensure reasonable competition. The district shall identify all significant evaluation factors and their relative importance, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, fitness of purchase, and manufacturer's warranties. The contract shall be awarded to the qualified bidder whose proposal meets the evaluation standards identified in the RFP and is determined to be most advantageous to the district when all factors are considered. If award is not made to the bidder whose proposal contains the lowest price, the district must make a finding setting forth the basis of the award. [PCC § 20118.2]

The school district governing board may enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils under specified conditions:

1. The contract must be entered into at a noticed public hearing of the governing board.
2. The board shall make findings that the electronic product or service in question is or would be an integral component of the education of pupils; and that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils.
3. The district shall provide written notice to the parents or guardians of pupils that advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians.

4. The district shall offer parents or guardians the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. The request shall be honored for the school year, or longer if specified, but may be withdrawn by the parent or guardian at any time.

Standard School Supply List

Elementary districts having an average daily attendance of less than 2,500 during the previous school year are required to purchase supplies from the Standard School Supply List prepared by the San Diego County Office of Education. The list includes detailed purchasing instructions. [EC § 38110-2]

The list of standard school supplies should be reviewed annually. A continuing program of standardization should result in a choice of satisfactory equipment and supplies. This practice promotes economy of scale in the purchase, storage, and maintenance of selected items.

Toxic Art Supplies

School districts may not order or purchase art or craft materials deemed to contain a toxic substance, as defined, for use by K-6 students. School districts may not order or purchase any substance defined as a toxic substance, causing chronic illness, for use by students in grades 7 to 12, inclusive, unless it meets required labeling standards or is exempt from labeling requirements. [EC §§ 32060-6]

Guidelines for the safe use of art and craft materials and a list of art and craft materials that cannot be purchased for use in grades K-6 are available at the Office of Environmental Health Hazard Assessment Web site (see Additional Resources).

Contractor Criminal Background Checks

A school district, charter school, or county office of education is required to take appropriate steps to protect pupils who may come in contact with a contractor's employees. Pursuant to Education Code section 45125.1, a contractor who provides pupil transportation or specified school, classroom, or schoolsite services and has contact with pupils must submit fingerprints to the Department of Justice for a criminal background check. Contractors providing other schoolsite services may be required to comply by the district or county office, based upon circumstances. The district shall consider the totality of the circumstances to determine whether a contractor or its employees have limited contact with pupils, i.e., factors such as:

1. Length of time contractors are on school grounds.
2. Whether pupils will be in proximity to the contractor's work site.

3. Whether contractors will be working by themselves or with others.

The school district, charter school, or county office of education shall determine on a case-by-case basis a contractor's "contact with pupils" prior to the bidding and/or award of a contract. The contractor shall not permit an employee to come in contact with pupils until the criminal background check is completed satisfactorily.

A contractor whose services will have "greater than limited contact with pupils" must certify in writing to the school district that neither the employer, nor any of its employees, nor employees of a subcontractor (if any) who may come in contact with pupils have been convicted of a felony as defined by Education Code section 45122.1.

Education Code sections 45125.1 and 45125.2 contain the following exemptions:

1. Services performed in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.
2. Services performed for the school district when the school district determines that the employees of the entity will have limited contact with pupils.
3. Contractor utilizes one or more of the methods in Education Code section 45125.2 to ensure pupil safety during construction, reconstruction, rehabilitation, or repair of a school facility.

The following are methods to ensure the safety of pupils under Education Code section 45125.2:

1. Installation of a physical barrier.
2. Continual supervision and monitoring of contractor's employees.
3. Surveillance of contractor's employees by school personnel.

ADDITIONAL RESOURCES

1. California Department of Industrial Relations:

Extract of Public Works Contract Award, Form DAS 13 (Rev. 5/01). Available:
<<http://www.dir.ca.gov/das/dasform13.pdf>>

Prevailing wage determinations. Available:
<http://www.dir.ca.gov/DLSR/statistics_research.html>

2. California Contractors State License Board for contractor license status check. Available: <<http://www.cslb.ca.gov/consumers/default.asp>>
3. California Department of Insurance to search for companies by line of insurance and access licensee and other insurance information. Available: <<http://www.insurance.ca.gov/0100-consumers/>>
4. California State Board of Equalization, Sales and Use Tax Programs. Available: <<http://www.boe.ca.gov/sutax/sutprograms.htm/>>
5. Office of Environmental Health Hazard Assessment for education links, including Art Hazards List for grades K-6. Available: <<http://www.oehha.org/education.html>>
6. San Diego County Office of Education, Facility Planning Services, for sample Construction Contract Documents 2006. Available: <<http://www.sdcoe.net/business2/facilities/construction-d.doc>>
7. U.S. Consumer Product Safety Commission for recalls and product safety information. Available: <<http://www.cpsc.gov>>

LIST OF EXHIBITS

- Exhibit 1 Extract of Public Works Contract Award Form, California Department of Industrial Relations, DAS 13 (Rev. 5/01).

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS

Revised April 2004

TO: California Department of Industrial Relations
Division of Apprenticeship Standards
P.O. Box 420603
San Francisco California 94142

FROM: AWARDING AGENCY

EXTRACT OF
PUBLIC WORKS CONTRACT AWARD

A CONTRACT TO PERFORM PUBLIC WORKS UNDER LABOR CODE SECTION 1777.5 HAS BEEN AWARDED TO:

2. NAME OF GENERAL CONTRACTOR		3. CONTRACTOR'S LICENSE NO	
4. MAIL ADDRESS (STREET NUMBER OR P.O. BOX)		5. CITY	
		6. ZIP CODE	7. TELEPHONE NUMBER
8. ADDRESS OR LOCATION OF PUBLIC WORKS SITE (INCLUDE CITY AND/OR COUNTY)			
9. CONTRACT OR PROJECT NUMBER		10. DOLLAR AMOUNT OF CONTRACT AWARD \$	
11. STARTING DATE (ESTIMATED OR ACTUAL) MONTH DAY YEAR / / (USE NUMBERS)		12. COMPLETION DATE (ESTIMATED OR ACTUAL) MONTH DAY YEAR / / (USE NUMBERS)	
13. TYPE OF CONSTRUCTION (HIGHWAY, SCHOOL, HOSPITAL, ETC.)		14. <input type="checkbox"/> NEW CONSTRUCTION <input type="checkbox"/> ALTERATIONS	
15. CLASSIFICATION OR TYPE OF WORKER (CARPENTER, PLUMBER, ETC.) THAT WILL BE EMPLOYED BY THE CONTRACTOR(S)			
16. Is language included in the Contract Award to effectuate the provision of section 1777.5, as required by the Labor Code?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is language included in the Contract Award to effectuate the provisions of Section 1776, as required by the Labor Code?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
17. SIGNATURE	18. TITLE	19. DATE	
20. PRINTED OR TYPED NAME		21. TELEPHONE NUMBERS	

Duplication of this form is permissible