

BEGINNING PURCHASING



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Guiselle Carreon

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TABLE OF CONTENTS – PURCHASING 101

	PAGE
SECTION I – Purchasing Policies and Procedures	
Objectives and Philosophy	2
District Purchasing Policies	3
Legal Issues in School Purchasing	7
SECTION II – Methods of School Purchasing	
Informal Methods of Purchasing	37
Formal Methods of Purchasing	38
Guidelines for Purchasing	41
Specifications	47
Purchasing Terminology & Glossary	49
Section III – Contracts & Sample Contracts	
Definition of a Contract	77
General Bid Documents	79
Sample Bid Schedule	105
Sample RFPs	106
Section IV – Miscellaneous Sample Policies, Documents, & Forms	
Standards of Purchasing Practice	162
Purchasing Ethics	163
Hazardous Materials Codes	169
Disposal of Textbooks and Instructional Materials	171
Data Privacy / Technology Contract Requirements	173
Request for Quotation Sample Forms	177
Sample BPs and ARs	179
Purchasing Processes Flowchart	218
Bid Limits & Codes Chart	219
P-Card Cardholder Sample Manual	220
Purchase Orders Terms & Conditions	234
Website Development – American with Disabilities Act Compliance	235
Purchasing Related Websites	237

NOTE: Some of the samples may contain outdated bid limits and are for reference purposes only.

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

Purchasing:

Sharon Ketcherside: Original idea for this workshop.
Guy Bryant: Introduction to Educational Purchasing
Janay Greenlee, Director of Purchasing, Escondido Union School District
Donna Caperton, Asst. Supt., Business, Vista Unified School District (formerly Director of Purchasing)
Mary Cox, Director of Purchasing, Ventura Unified School District
Southern Section Purchasing Professional Council: Legal Issues in Purchasing

Legal Counsel:

Best Best & Krieger
Fagen Freidman Fulfrost, Attorneys at Law
Lozano Smith Attorneys at Law

Thank you to all, Guiselle Carreon
Consultant, Purchasing & Accounts Payable

SECTION I
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.)



PURPOSE OF A WRITTEN POLICY

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:

Spell out the responsibilities and authority of purchasing.

1. Apprise other departments of purchasing's prerogatives and thus avoid misunderstandings and friction.
2. Help promote consistent and fair relations with vendors, old or new.
3. Facilitate uniform action by all purchasing personnel in dealing both within and outside the district.
4. Standardize routing purchasing procedures and thus relieve the need for close supervision.
5. 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 – CENTRALIZED SERVICES (EXAMPLE)

A. BOARD RELATIONS

1. All duties of purchasing for the Governing Board 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 to provide service to and for the district and accountability to the taxpayers. 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 within 60 days of issuance.
5. The action of the Board on all purchase orders shall be recorded in the minutes of the Board

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. (Districts with Warehouse services.)
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 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. (Districts with Warehouse services.)
6. 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.
7. The Purchasing Department shall handle the disposal of all surplus property, obsolete or scrap material, as authorized by the Governing Board.

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 sale. 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 when:
 - a) 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.
 - b) 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. The Purchasing Department should establish a collaborative relationship between the classroom teacher, principal and the various central administrative departments to ensure timeliness of purchases.
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 may work with committees to create 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

All suppliers' representatives shall have the opportunity to introduce themselves and their products the first time they call. Subsequent visits shall be promptly acknowledged and interviews granted when time allows or appointments made to accommodate the schedule.

1. 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.
2. All letters, wires and other types of communications shall be answered or acknowledged promptly.
3. The Purchasing Department shall conduct all price adjustment negotiations when necessary.
4. 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 encouraged when all costs are borne by the district.

E. PURCHASING PROCEDURES (Governing Board Approval)

1. A list of all Purchase Orders written will be presented to the Governing Board within 60 days of execution.

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 Governing Board 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. Competitive bidding shall be practiced (advertised bid, written price quotation, oral price quotations) whenever practical or required by state or federal law.
3. Bid instructions shall be clear and complete, setting forth all conditions necessary to bid.
4. Bid specifications shall be clear, complete and conducive to competitive bidding.
5. The Purchasing Department shall seek bids from those sources consistent with quality, delivery and service.
6. Bids shall be opened in public at the prescribed time and place.
7. After the bids have been opened and tabulated, they will be available for those interested in reviewing the documents. They shall not, however, be removed from the Purchasing Office. Paper copies will be charged a per page copy cost not to exceed actual cost of duplication.
8. A summary of all bids over \$15,000.00 for work to be done and \$50,000 (as adjusted annually by the Superintendent of Public Instruction) for services, materials or supplies,

Note: this needs to change for CUPCCAA districts.

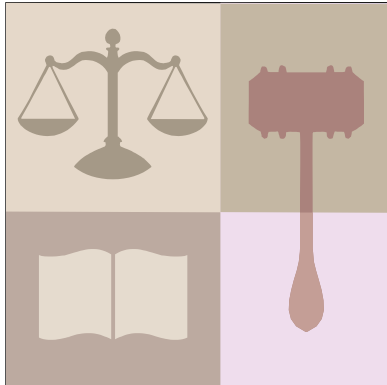
showing the recommendations of the Purchasing Department shall be submitted to the Board for approval.

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 Public Instruction] 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 the bid limit, the determination to utilize written or telephone bids shall be left to the discretion of the Purchasing Department.
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 and capital equipment 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 Governing Board through the issuance of school warrants.



Legal Issues In School Purchasing

Acknowledgements:

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Joshie Cox
Loren Couplin
Jim Downs
Michael Jung
Susi McLane
Brian Tanguay, Assistant Chair

Mary Cox
Susan Culberson, Secretary
Deborah Harris, Treasurer
Nate Holt, Chair
Deanna Rantz

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

LEGAL ISSUES IN SCHOOL PURCHASING

TABLE OF CONTENTS

INTRODUCTION

BIDS: GOING ONCE, GOING TWICE, GONE!

WHICH BID LIMIT TO USE?
DO YOU HAVE TO BID LEASES
SERVICES THAT EXCEED THE BID LIMIT
BID LIMIT WITH A TRADE-IN
BID LIMIT WITH CUMULATIVE ORDERS
PROPRIETARY SPECIFICATIONS
IRREGULARITIES & INFORMALITIES
INCORRECT SPECIFICATIONS
ADVERTISING & LABOR RATES
AWARDS & EVALUATIONS
PIGGY BACK
LONG-DISTANCE SERVICE
EMERGENCY PURCHASE ORDERS
AWARDING ON BASIS OTHER THAN PRICE

LIABILITY: YOURS, THEIRS, OURS!

LIABILITY IN EXCEEDING THE BID LIMIT
LIABILITY WITH A CANCELED ORDER
PURCHASING AGENT INSURANCE
LIABILITY & INJURY
CAL-OSHA
SIGNING ON THE DOTTED LINE
YOU'VE BEEN NAMED
INJURY & SURPLUS ITEMS

CONTRACTS

VENDOR ABIDING BY A CONTRACT
CONTRACTS & INSURANCE REQUIREMENTS
MULTI-YEAR CONTRACTS
MAXIMUM CONTRACT DURATION
INTEREST AND LEASE CONTRACTS

PURCHASING POTPOURRI

COPYRIGHT LAW & YOU
SURPLUS ITEM DOLLAR LIMIT
SOLE SOURCE DETERMINATION

ETHICS QUIZ

GENERAL KNOWLEDGE QUIZ

LEGAL CODES QUIZ

ANSWERS TO QUIZZES

APPENDIX A-1
APPENDIX A-2
APPENDIX A-3
APPENDIX A-4

APPENDIX A-5
APPENDIX A-6
APPENDIX A-7

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 (\$97,600 for 2021), 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 ([\\$97,600 for 2021](#)) 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 \$75,000.

The 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. Further, the 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 \$75,000 per year for five years has a total value of \$375,000, it would have to be bid. (PCC 20111, EC 17451; Community College: PCC 20651, EC 81551.)

ISSUE: SERVICES THAT EXCEED THE BID LIMIT

Your District needs to contract for Network Maintenance and Network Security Services that total approximately \$93,000 annually.

If you suspect the 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.)

Note: It is unlawful to split orders 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. (PCC 20116.)

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 ([\\$97,600 for 2021](#)). 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 (including tax and shipping). (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, if the purchase is unforeseen. However, splitting orders or contracts should be avoided whenever the total requirement can be foreseen. (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.html>

ISSUE: BID EVALUATIONS AND AWARDS

Can you include life cycle and maintenance costs as an evaluation factor when awarding a bid?

Yes, but generally, a bid must be awarded to the lowest bidder. Although, many factors that affect the overall cost may be used when evaluating a bid, the requirements must be clearly outlined, and the price easily determined from the bid form. (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 section 6500 and Public Contract Code section 1100 define public agency and Public Contract Code section 20118 gives a district the authority to purchase through another public agency; provided, however, that the district 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. A board finding that the bid being recommended for award is in the best interest of the school district must be made following a comparative process. (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 a geographical region were subject to the monopoly of the local telecommunications company. These services were not subject to the bid requirement of public contracts code because the courts had held that public utilities were the only ones that could provide that utility, therefore excepting the need for bids. But, with deregulation and competition, telecommunications is no longer considered sole source, so districts should consider bidding in accordance with the dollar limits provided by Public Contract Code section 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. Any contract for the acquisition of telecommunications services and any contract for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of Technology. Any acquisition 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 Technology shall have responsibility for the establishment of policy and procedures for telecommunications. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the agency 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 agency an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

Although this Section is not directly applicable to K-12 school districts, it shows the Legislature's intent that telecommunication equipment and services be bid in accordance with generally accepted bidding procedures.

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)

Not necessarily. This may qualify as an emergency expenditure for work to be done.

Public Contract Code section 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 project without advertising for/or inviting bids.
- b) Notwithstanding section 20114, authorize the use of day labor or force account for the emergency project.

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. The County Superintendent of Schools must approve the emergency prior to commencement of work. *Note: CUPCCAA districts must adopt emergency procedures in accordance with PCC 22050.*

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: AWARDED A BID ON A BASIS OTHER THAN THE LOWEST PRICE

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 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.

Note: A purchase order is a contract and termination rules apply. Include termination language in your purchase order terms and conditions to protect the district.

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 non-responsiveness 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, rather than responsiveness of the bid, meaning the bidder should have been entitled to a hearing on the district's determination. 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 non-responsiveness could be based on something outside the bid documents, it 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 express provision in the contract to that effect. However, inability to obtain merchandise or circumstances beyond any control of the contracting parties (“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 section 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. (Education Code sections 17450-17452; 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. Public Law 94-553 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 (\$5,000 for community college districts), 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. (Education Code sections 17545-17546; 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 should not be utilized 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 needs 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. 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.
- _____ 11. 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.
- _____ 12. 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.
- _____ 13. 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.
- _____ 14. The local Purchasing Agents Association traditionally asks local companies to contribute raffle gifts for the Association’s annual Christmas parties.
- _____ 15. 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.
- _____ 16. 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.
- _____ 17. 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.
- _____ 18. 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 of a vehicle?
- _____ 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
College Education Code
81641 | A. _____ | \$15,000.00 work-to-be-done
\$50,000.00 supplies & equip. (Univ.)
\$50,000.00 supplies & equip. (College) |
| 2. K-12 P.C.C. 20111
College P.C.C. 20651 | B. _____ | Accept securities equivalent to any
amounts withheld to ensure performance |
| 3. K-12 Education Code
17546
College Education Code
81452 | C. _____ | Publish once-a-week for two weeks,
open bids third week.
(Notice calling for bids). |
| 4. K-12 P.C.C. 20116
College P.C.C. 20657 | D. _____ | Exempt from bidding (Computer
Software, textbooks, etc.) |
| 5. K-12 P.C.C. 20113
College P.C.C. 20654 | E. _____ | Emergency repairs, alterations, etc.
without bidding. |
| 6. K-12 Education Code
38083 | F. _____ | Exempt from bidding (Special Services)
(Auditing/Engineering, etc.). |
| 7. K-12 P.C.C. 20118.2
College Education Code
81651 | G. _____ | Property more than \$2,500.00 (\$5,000.00 for
community colleges)
(Surplus Sale) |
| 8. G.C. 53060 | H. _____ | Unlawful to split bids. |
| 9. K-12 P.C.C. 20118
College P.C.C. 20652 | I. _____ | Exempt from bidding (Foodstuffs). |
| 10. P.C.C. 22300 | J. _____ | Purchase or lease of goods through
another public agency within county
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.	Yes	10.	No	J.	9.
11.	Yes	11.	Yes		
12.	Yes	12.	No		
13.	No	13.	No		
14.	Yes	14.	Yes		
15.	Yes	15.	No		
16.	No	16.	No		
17.	Yes	17.	Yes; however it depends on how it is written and if it restrains competitive bidding		
18.	Yes	18.	Yes		
		19.	No		
		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 (\$97,600 for 2021) 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 is more than incidental (generally greater than 10% of the total cost) 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 over the \$15,000 bid limit 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.

Additionally, a district may opt to formally bid the equipment and the installation separately.

APPENDIX A-2

Previously Education Code section 39523 provided for a trade-in of equipment. That Section was eliminated from the Education Code but the analogous section for community colleges, Education Code section 81454, still remains. 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 Non-collusion 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.html>

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.

All CONTRACTORS and subcontractors must be registered with the DIR to submit a bid
proposal for a public works project pursuant to Labor Code section 1725.5. As required by
Section 1773 of the California Labor Code, the California Department of Industrial Relations has
determined the general prevailing rates of per diem wages for the locality in which the work is to
be performed for the Project. Copies of these wage rate determinations, entitled Prevailing

Wage Scale, are available at the following website: www.dir.ca.gov. It shall be mandatory upon the successful bidder to whom the contract is awarded, and upon any subcontractor listed, to pay not less than the specified rates to all workers employed by them for the Project.

The successful bidder and any listed subcontractor(s) of this Project are subject to the oversight, monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations, Division of Labor Standards Enforcement, and will be required to submit certified payroll records to the Labor Commissioner.

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 2012 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 CalLRptr. 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 section 3400 and exceptions thereto in Section C.12 of the August 2012 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 allocable 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.

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

OPPOSES FAIR USE

- | | |
|---|--|
| <input type="checkbox"/> Teaching | <input type="checkbox"/> Commercial activity (Ask: will this be sold?) |
| <input type="checkbox"/> Research | <input type="checkbox"/> Profiting from the use |
| <input type="checkbox"/> Scholarship | <input type="checkbox"/> Entertainment |
| <input type="checkbox"/> Criticism | <input type="checkbox"/> Bad-faith behavior (Ignoring Copyright Law) |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Denying credit to original author
(Lack of or no attribution given to original author) |
| <input type="checkbox"/> Parody | |
| <input type="checkbox"/> News reporting | |
| <input type="checkbox"/> Nonprofit educational institution | |
| <input type="checkbox"/> Restricted access (available only to students or another appropriate group) | |
| <input type="checkbox"/> Transformative or productive use (Change the work for new utility, adds value to the work or does not diminish the market) | |

2. What is the **NATURE** of the copyrighted work that is being considered for use? Check all that apply.

FAVORS FAIR USE

OPPOSES FAIR USE

- | | |
|--|---|
| <input type="checkbox"/> Published work | <input type="checkbox"/> Unpublished work |
| <input type="checkbox"/> Factual or nonfiction based | <input type="checkbox"/> Highly creative work (art, music, film, plays) |
| <input type="checkbox"/> Important to favored educational objectives | <input type="checkbox"/> 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

- Small quantity of work to be used
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

- Large portion or entire work to be used
- Portion used is central to work or “heart of the work.”
- 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

- User owns (lawfully acquired or purchased copy of original work)
- One or a few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

- Made openly accessible on the internet or in other public forum
- Numerous copies made
- Significantly impairs market or potential market for copyrighted work or derivative
- Could replace sale of copyrighted work
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable license fee available for using work
- Repeated or long-term use desired

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

*Adapted from documents prepared by the Copyright Management Center, Indiana University, Purdue University Indianapolis; the University of North Carolina’s 2001 Copyright Policy; and Brigham Young University Copyright Licensing Office.

SECTION II
METHODS OF
SCHOOL
PURCHASING

METHODS OF PURCHASING

Historically, school purchasing departments have used a requisition and purchase order to acquire 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

The Revolving Cash Fund is one of the least expensive and one of the most expeditious methods of acquiring products. Education Code section 42800 authorizes the establishment of funds with the consent of the county superintendent of schools. These funds can be established either at school or district level within the Education Code limits. A written policy is recommended. *Note: The authority for a Cafeteria RCF has been rescinded and no longer is cited in the Code.*

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

Another form of pre-payment is the use of a prepayment fund as authorized in the Education Code section 42821 for an amount not to exceed \$1,000. A purchase order accompanied by a blank check is provided to the vendor who is to fill in the date and amount upon shipment. The blank check must be restricted in dollar value and show a void date. All monthly list of transactions must be approved by the board prior to replenishment of this fund.

2. Open / Blanket 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 (e.g. 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. Purchase Requisition/Order Form

Most districts now utilize an electronic requisition format which is directly linked to the District's financial records for verification of funds before proceeding to the Purchasing Departments. Requisitions are routed electronically using pre-determined criteria and may provide for an electronic signature indicating approval. Requisitions typically include the vendor name and address, description of goods or services, quantities, price, account information, and any specific instructions not included in the PO terms and conditions.

For districts using paper requisitions and purchase orders, the information required would be the same and routing would be done manually.

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) (verify current year limit)

3. Group Purchasing

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, either through cooperative purchasing or joint powers agencies.

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.

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”). (Government Code section 6502.) To form a JPA, the governing body of the public agency 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. The JPA must be registered with the state. (Government Code section 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.

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.

State Contracts: awarded by the Procurement Division of the Department of General Services for a wide range of equipment, supplies and materials. <http://www.dgs.ca.gov/pd/Home.aspx>

County Superintendent of Schools Contract: County Superintendents may award contracts for use by school districts enabling them to cooperatively purchase school supplies, materials and equipment on a joint basis.

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 to authorize participation in such cooperative purchasing efforts are required. Do not assume such joint ventures will automatically obtain the lowest possible cost. Each district must make a finding that a cooperative contract serves the best interest of the district. The JPA must be properly formed and a public entity.

4. Piggybacking

- a. General Authority – 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. This is commonly known as “piggybacking” on another contract. It is important to note that the Public Contract Code does not authorize districts to “piggyback” on other public agency’s service contracts.
- b. Best Interest Determination Required – 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 purchasing the

item via piggyback is in the best interests of the district. It is a best practice to make this determination through board approval and adoption of a resolution.

- c. Payment Directly to Vendor is Permissible – 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.
- d. Personal Property Only – For many years the application of Public Contract Code sections 20118/20652 has been stretched to cover a wide variety of acquisitions. However, this practice has been somewhat restrained by a 2006 opinion of the California Attorney General. In that opinion (89 Op. Att’y Gen. 1), the Attorney General concluded Public Contract Code section 20118 may not be used to acquire factory-built modular building components for installation on a permanent foundation. This practice, and others like it, are clearly not authorized by the statute which expressly pertains to personal property, not property which will be installed on a permanent foundation. This conclusion appears to be being accepted by school attorneys throughout the State.
- e. The contract must have been procured in accordance with applicable procurement policies. PCC 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” This means that the agency that procured the contract (meaning, the contract the district is considering piggybacking on) must have procured it in accordance with applicable procedures.

5. CMAS (Public Contract Code sections 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], Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125) [relating to alternative protest procedures]. State and local agencies may contract with suppliers awarded those contracts without further competitive bidding."

It is a best practice to have the district's governing board approve purchase pursuant to the CMAS sections.

6. 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.

7.1 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.

C. GUIDELINES FOR PURCHASING OR LEASING EQUIPMENT/SUPPLIES OR CONTRACTING FOR WORK TO BE DONE:

- 1.E Equipment or Supplies
PCC 20111; PCC 20651
to be bid if cost exceeds \$50,000 [Updated annually, 2021 - \$97,600]
- 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.) 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.

4. Perishable Foodstuffs and Seasonal Commodities
Pursuant to Education Code section 38083, such items are exempt from bidding unless using federal funds. (See Section E.)
5. Supplementary Textbooks
Library books, educational films, audio-visual materials, test materials, workbooks, periodicals are exempt from bidding under Public Contract Code section 20118.3.
6. Special Services
Pursuant to Government Code section 53060, contracts for certain specialized services, including advice in financial, economic, accounting, engineering, legal and administrative matters, are exempt from formal bidding and may be procured through less formal, but still competitive, methods instead.
7. Unlawful to Split Projects
Public Contract Code sections 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
In accordance with Public Contract Code section 20118.4, the governing board of a district may authorize certain changes or alterations to contracts already entered into, without bidding those changes or alterations. Generally, to avoid bidding, the price for such changes must be less than or equal to:
 - a. The dollar limits previously specified - \$15, 000; 2021 - \$97,600

- 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, in which case the relevant amount is 25%.

9. Electronic Data-Processing Systems and Supporting Software

Pursuant to Public Contract Code section 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 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”

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 “of 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, 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, 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 (Government Code sections 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).

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. (Public Contract Code sections 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 party 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; and (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.

1. TYPES OF SPECIFICATIONS

- a. The Make and Model (Brand or Trade Name) specification is commonly used to establish the quality desired. The trade name must always be followed by the phrase “or equal” as required by law unless a minimum of two brands are named. Brands used as specifications must be well known and catalogs must be readily available which list the specified items with numbers and general description. Provision should be made in the bid form for a space for bidder to write in the particular make and model that he is bidding, and a notation should state that if no other make and model is listed the bidder is offering that which is specified. All alternate offers should be tested and analyzed thoroughly against the established criteria or quality.
- b. The Descriptive specifications consist of a detailed description which indicates size, color, materials, options, accessories, electrical, and any features

necessary to establish an acceptable level of quality. Utilization of industry standards and federal specifications can greatly simplify in many instances the buyer's job. Blue prints or dimension sheets are another common way of establishing quality specifications where dimensional limits are required. When using these, the information must be clear and the dimensions completely specified, and the tolerances expressed with clarity of language or terminology.

- c. The Performance specification details the end result and the function desired as simply as possible, with the performance limits or variables clearly specified. It normally makes no attempt to specify details except possible limits in dimension and weight and generally makes no effort to specify composition or materials. The intent of this type of specification is to utilize the technical staff of any supplier to its utmost in obtaining the most practical, efficient and competitive solution to the buyer's requirement. This type of specification is often used to obtain services.

E. FOOD SERVICE PURCHASES

Special requirements apply to contracts with Food Service Management Companies (FSMC) that perform one or more activities of a food service operation on behalf of a school nutrition program sponsor (such as a school district), including bookkeeping, menu development, preparation of reimbursement claims, organization and maintenance of program documents (such as daily meal counts, menus, and menu production records), meal preparation and service, consulting services, and purchasing services. (California Department of Education, Food Service Management Company Services Procurement (June 2012) <http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp> (as of September 18, 2012).) Federal regulations require that districts annually submit all new contracts, corresponding bid documents, and/or annual contract extensions to the California Department of Education, Nutrition Services Division, for approval. Contracts may be valid for up to one year from the date they are signed by all parties and may be renewed for up to four additional one-year terms.

Federal regulations require that all purchases of goods and services using food service revenues follow federal procurement regulations. (EDGAR 2016 – Code of Federal Regulations). Sponsors electing to contract with a food service management company must adhere to a competitive bidding process. Under the federal rules, some of the examples of situations considered to be inappropriately restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) requiring unnecessary experience and excessive bonding; (3) noncompetitive pricing practices between firms or between affiliated companies; (4) noncompetitive awards to consultants that are on retainer contracts; (5) organizational conflicts of interest; (6) specifying on a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process. (7 C.F.R. §3016.36(c) (2012).)

If the total annual value of the contract is less than the applicable bid threshold, an informal bid process can be used. For contracts that are equal to or exceed the applicable bid threshold, a formal bid process must be used. For school districts, the bid threshold is established in Public Contract Code section 20111(a) and is adjusted annually.

For informal bidding, the district must write a description of the services being sought and provide the same information to a minimum of three agencies which the district contacts to obtain price quotes for the services. For each contacted agency, the sponsor must retain the following information: (1) the name of the agency; (2) the name of the contact person; (3) the phone number; (4) the quoted price; and (5) for the selected agency, a rationale for the selection and accepted bid price.

For formal bidding, the process is much more detailed and may include, but is not limited to, the following activities:

- Advertising in a public manner, typically a local newspaper of general circulation;
- Providing a Request for Proposal or Invitation for Bid to agencies known to provide the desired services; (PCC 20111 amended on January 1, 2018, allows for the use of RFPs for all goods and services purchased for a Child Nutrition Program)
- Offering facility review visits; and
- Establishing a date and time for opening bids.

As in the informal bid process, the formal bid process requires the district to document the bid process and include a rationale for the selection of the bidder and the awarded contract amount. The district must maintain the bid documentation for the duration of the contract, or in the event of a contract and/or procurement process audit finding, three years beyond the final resolution of the findings. Regardless of the bid process used, districts must award the contract to the lowest bidder that best meets their needs. (See, California Department of Education, Food Service Management Co. Services Procurement, supra.)

Federal law requires districts to have protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to the California Department of Education. Also, contracts with food service management companies must include federally required clauses contained the Code of Federal Regulations, title 7, sections 3019.48, 3016.36(i), 210.16(a), and 250.12(d). Finally, districts are prohibited from awarding a contract to any vendor that prepared or had a significant role in developing the contract and related bid documents.

Note: Federal requirements are applicable to all federally funded programs and compliance with EDGAR is mandatory.

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. (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 item.

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 agency.

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, 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 Opened 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 to the purchaser if he pays in cash and 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 on 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 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. 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 the government setting, this management is conducted within the framework of delegated responsibility and authority and includes the use of supporting agencies and/or departments.

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.

CONVENIENCE TERMINATION CLAUSE - A contract clause which permits the government agency 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 - A document usually called a deed which transfers the title or other interest in land from one party to another.

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.

CONVENANT - A written promise under seal. It is sometimes used in the place of the word contract.

DAY LABOR - Work done by agency's own forces. See Force Account.

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 in 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 - Removing goods from the premises and/or control of an agency; disposing of goods.

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 Brand 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.

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 a 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, such as 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.

FORCE ACCOUNT - Work done by agency's own forces. See Day Labor.

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 agency 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 Principles.

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.

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.

NONRESPONSIVE 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.

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 to proposition, 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 BOND - 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 agency 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; 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.

PUBLIC 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 agency 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 others, 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.

REQUIREMENTS 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 agency'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 employee, 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 that the government agency 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 record 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 CONDITIONS - 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.

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 agency's 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 "guaranty," 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.

**SECTION III
BID & RFP
SAMPLE
DOCUMENTS**

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?

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 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.

[INSERT NAME OF SCHOOL DISTRICT]

[INSERT BID NAME]

[INSERT BID #]

**BID AND CONTRACT DOCUMENTS
(FOR GOODS)**

[Insert Date]

Purchasing Department

**[insert phone number] – [insert fax number] (Fax)
[insert email]**

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the [insert name of school district] of [insert county], California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT will receive up to, but not later than [insert time and date], sealed bids for the award of a contract for [insert Bid Name, Bid #], as further set forth in the Specifications included herein.

Each bid shall be submitted on a form obtained at the Purchasing Department of said District, located at [insert address] or accessible on our website [insert website], and 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 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.

Pursuant to Public Contract Code section 3400 (c), schools districts may make a finding that certain brand or trade names are necessary in order to maintain conformity among its campuses, compatibility with existing systems, and to streamline maintenance and parts storage. A copy of the finding made by a school district will be incorporated in the bid documents.

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 section 20117.

Insert DVBE statement if needed.

Clerk of the Governing Board
[Insert name of School District]

Publication: [insert name of publication]
Advertising dates: [Insert Dates]

TABLE OF CONTENTS

Information to Bidders..... 4

Specifications.....9

Bid Forms 10

Instructions and Conditions 14

Non-Collusive Bidding Declaration 17

Agreement..... 18

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 [insert time and date]. Bids shall be received in the [insert name of school district], [insert name of department], [insert address]. 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 and at the designated location. 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:

Name
Title

Address

School District

- 3) **BID SUBMISSION:** To receive consideration, bids 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 typed 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. Bids may be modified or withdrawn by written notice or in person by a bidder if the request is received prior to the exact hour and date set for the bid opening.
 - 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. Vendor shall submit a **Product Substitution Request with all supporting documentation** by [insert date and time]. Items offered as a substitute to a specified product may be required to be submitted for demonstration.
- 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 the bid is made to:

_____ 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 (or add requirements for bid security)
 - 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. It is the sole responsibility of the bidder to ensure all addenda are accounted for in the bid prior to submission.
 - 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 Contract will be awarded to the lowest responsive and responsible bidder(s). The Governing Board of the _____, however, reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, and to waive any informality in the bids or in the bidding.
- 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 to 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.
- 18) **Hold-Harmless Clause:** Bidder shall indemnify and hold 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 non-copyrighted composition, secret process, trademark, patented or unpatented invention, article or appliance furnished or used under this quotation. To the furthest extent permitted by law, Contractor, at Contractor's own expense, shall also defend, indemnify, and hold harmless District, and its Board of Trustees, agents, representatives, officers, Contractors, employees, trustees, and volunteers ("District Indemnitees"), from any and all claims, damages, losses, and expenses, arising from, pertaining to, or relating to, the negligence, recklessness, errors, or omissions, or willful misconduct of Contractor or its agents. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District Indemnitees.
- 19) **Public Liability And Property Insurance:** [NOTE: This is only a sample. District RM should review for each individual project/bid.] 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/\$2,000,000 Aggregate.

Property Damage Liability Insurance including auto (both owned and non-owned): Not Less Than \$2,000,000 Aggregate.

Insurance certificate must name 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, electronic or otherwise. The complete contract consists of the following documents: the Notice to Bidders, the Information for Bidders, the Specifications, the Accepted Bid, the Instructions and Conditions, 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 from [insert date] to [insert date].

- 21) **Contract Renewals:** If mutually agreeable and if in accordance with Education Code section 17596, 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.
- 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 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.
 - c) The Parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor's personnel shall only perform work that is outside the usual course of the District's business; and (3) Contractor's personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

SPECIFICATIONS

[insert specifications of item being procured]

BID FORM

1. Pursuant to and in compliance with your Notice to Bidders and other documents relating thereto, the undersigned Bidder, having thoroughly familiarized itself with the terms of the Agreement, the Specifications, and all of the Contract Documents, hereby proposes and agrees to perform, within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, all in strict conformity with the specifications and other Contract Documents, including Addenda Nos. _____, _____, _____, and _____, on file at the Purchasing Office of the issuing District for the prices set opposite the articles listed herein.
2. It is understood that the District reserves the right to reject this bid in whole or in parts; to waive information in the bids or bidding, and that this bid shall remain open and not be withdrawn for a period of sixty (60) days from the date prescribed for the opening of this bid.

It is understood that the successful bidder will be required to deliver: **[insert brief description of items]** as further set forth in the Specifications. This bid is to cover the period of **[insert date]** through **[insert date]**, and may be renewed for up to two (2) one-year periods.

3. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned within sixty (60) days after the opening of the bid, or at any time thereafter before this bid is withdrawn, the undersigned agrees that they will execute and deliver to the District a contract in the form attached hereto in accordance with the bid as accepted, within five (5) days after the receipt of notification of award, and that performance of the contract shall be commenced immediately by the undersigned bidder upon due execution and delivery to the District the Agreement of said Contract Documents.
4. Notice of acceptance or requests for additional information should be addressed to the undersigned at the address stated below.
5. The names of all persons interested in the foregoing proposal as principals are as follows:

NOTE: Bid form format will vary. With lengthier bids, a separate form may be included here by reference and attached to bid. Single line item bids would only require one Total Bid Price Line such as for a vehicle, while other goods bids are often multiple line, unit price bids.

#	Annual Est. Qty.	Description	Brand and Model	Unit Price	Extended Price
1.					
2.					
3.					

4.					
5.					
6.					
7.					

Total Bid Price:

_____ dollars and _____ Cents.

(\$ _____)

DELIVERY LOCATIONS & ADDRESSES

Deliveries are to be made between the hours of _____ and _____. When students are present, the use of a spotter will be required when entering or exiting school grounds.

Site Name
Site Address

Site Name
Site Address

Site Name
Site Address

Delivery instructions are important when delivery is not centralized. Make sure to incorporate delivery instructions such as date and time.

Site Name
Site Address

Site Name
Site Address

Site Name
Site Address

Site Name
Site Address

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 accepts the option to renew for the following periods and at what percentage:

Dates	Yes	No
7-1- to 6-30-	_____	_____
7-1- to 6-30-	_____	_____

The individual signing this Agreement warrants that he or she has the full authority of the entity on behalf of which his or her signature is make.

I _____, the _____ of the bidder, hereby certify under penalty of perjury under the laws of the state of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct.

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 [insert name of District] School District and will be administered by [insert name], 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 [insert date]. 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 [insert number] percent ([] %).
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.

Alternative language to #4 and #5

INCREASE OR DECREASE IN PRICE:

- a) *Increase in Price: During the life of this contract, the Contractor may request a price increase for good cause. Good cause will be determined in the sole discretion of the District. The decision of the District shall be final. The Contractor is expected to perform at the bid price throughout the term of the contract. A price increase request, however, will be considered. When addressing the question of whether there is good cause to grant a price increase, the Contractor must submit a request in writing thirty (30) calendar days in advance of the next scheduled meeting of the District. A determination of good cause will take into consideration increases in costs such as raw materials and labor. The Contractor must present written evidence of good cause and shall bear the full burden of providing such evidence. No increase will be allowed sooner than 180 calendar days from the date of contract award, including thirty (30) calendar days advance written notice and a regularly scheduled Board meeting. No price increase will go into effect until board approval.*
 - b) *Decrease in Price: During the life of the contract including any extensions, there may be a general published manufacturer's price change or a general market change, as evidenced by prices paid by other governmental entities or private organizations. The change in price may relate to the cost of materials, labor, or distribution of the product or service specified. Should such a change in price occur, the Contractor has an affirmed duty to notify the District of decreases in price and to extend the full decrease to the District. Failure of Contractor to notify the District and/or extend such decrease may be deemed a breach of contract.*
6. STOCK AVAILABILITY: Vendors will stock items proposed with the guarantee to buyer that there will be no stock-outs. Vendors must contact the district within twenty-four (24) hours of a stock-out beyond their control.
 7. INVOICING & PAYMENTS: Within thirty (30) days of receipt of a proper invoice and after delivery of any or all of the items hereinabove set forth and their acceptance by the ordering district; the ordering district agrees to pay to the Contractor, and the Contractor agrees to accept in full payment therefor, the sums set opposite each item.

All invoices are to be submitted in duplicate and mailed in accordance with instructions as shown on purchase order (unless otherwise noted).

All invoices shall be forwarded to the address noted on the purchase order and marked:

_____ SCHOOL DISTRICT
ATTENTION: ACCOUNTS PAYABLE

Invoices will be returned for correction unless they contain the following information: Item numbers; Description of Item; Quantity; Unit Price Extensions and Total. Each invoice shall carry the Purchase Order Number of THE DISTRICT. The original and one copy shall be forwarded to the office listed above.

Payment in full will only be made upon final acceptance of items as shown on Purchase Order.

The Bidders that request prompt payment of bills shall send signed delivery tickets with the invoice to facilitate expedited payment.

Delivery shall be FOB Destination Freight Prepaid and allowed to each individual location as noted on the Purchase Order.

THE DISTRICT's standard terms for payment are Net 30 days. All discounts, including prompt payment, shall be included in bid price.

8. LATE FEES: In the event that the Contractor fails to deliver the ordered goods by the time specified in the contract, the ordering district may impose a late fee charge. This charge shall be taken as a credit against the Contractor's invoice to the ordering district. The late fee charge shall be imposed at a rate of 2.5% per calendar day against the total dollar value (before tax) of the late delivered goods. This late fee shall commence on the first day following the end of the specified delivery period.

Assessment of late fees shall not negate any of the other rights and remedies stipulated in the contract. Any agreement between ordering district and Contractor changing the specified delivery date must be in writing. Late fees will be assessed if Contractor fails to meet the revised delivery date.

9. EVALUATION CRITERIA: This bid will be evaluated on the following factors to determine responsiveness and responsibility of bidder: price, competency, credibility, and 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. Bids that are deemed to be nonresponsive or bidders that are found to be non-responsible will be rejected in accordance with Public Contract Code and due process procedures.
10. AWARD OF BID: Bid will be awarded to the lowest responsive and responsible bidder.
11. MULTIPLE AWARDS: On line item bids, the DISTRICT reserves the right to award this contract to multiple bidders, or to group like items and award in lots.
12. BRAND NAMES AND MODEL NUMBERS: Bidders may find discrepancies in the model numbers given in that the model number may be an old one and the item is now referred to by a new number. Consideration will be given in that situation. Please note that you are bidding on the same item as specified by designating "New Number" in the "Brand/Model" area, should that be the case.
13. 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-responsible and bids may be rejected due to failure to include MSDS with bid documents when called for in the bid documents.

14. **DEVIATIONS FROM BID TERMS & CONDITIONS:** Deviations from any bid term or condition may cause your bid to be rejected as nonresponsive. All deviations must be clearly noted at time of bid submission. If not noted, the assumption is that bidder is bidding as specified.
15. **DISCONTINUED AWARDED LINE ITEMS(S):** Awarded bidders are required to immediately notify the bid administrator of manufacturers discontinued awarded line item(s). Official notification must be in written format via USPS, fax, or email referencing the bid number and line item number with written proof from the manufacturer of the discontinuance.
16. **REPLACEMENT OF DISCONTINUED AWARDED LINE ITEM(S):** A replacement will be considered if, and only if, the proposed replacement is the newest line model and is equal to or exceeds the discontinued line item(s) specifications, and is offered for an equal or lesser price. A replacement cannot be a model from a different line. Contractor shall provide substantiating information when requesting consideration of a substitution as an equal. Office notification must be in written format via USPS, fax, e-mail referencing the bid number and the line item number.
17. **TOLL-FREE TELEPHONE NUMBER:** All responding vendors outside the District's area must provide a toll-free telephone number on their bid form. Acceptance of collect calls is not an acceptable alternative. Failure to provide a toll-free telephone number on the bid form by vendors outside the District's area will cause the entire bid to be considered non-responsive and rejected.
18. **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.
19. **CANCELLATION FOR INSUFFICIENT OR NON-APPROPRIATED FUNDS:** The bidder hereby agrees and acknowledges that monies utilized by the District to 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 with 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 _____ by and between the _____ 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 Specifications, the Accepted Bid (including the Bid Form, Delivery Locations and Addresses, and References), the Instructions and Conditions, the Non-collusion Declaration, 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 undisputed amount of each invoice within thirty (30) days of receipt.
4. **TERMINATION.**

FOR CONVENIENCE: The District may terminate this Contract for convenience upon sixty (60) days written notice to Contractor.

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 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 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. **HOLD HARMLESS:** 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, pandemics, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government or other such event reasonably beyond the control of either party, 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: _____

DISTRICT:

_____ School
District

By _____

Title _____

Date: _____

Governing Board Date _____

The following certifications may be required if any purchases resulting from this bid utilize federal funds. See Education Department General Administrative Regulations (EDGAR). The presenters do not warrant that all of these certifications are required or that any other certifications may be necessary. Districts are responsible for verifying with the federal awarding agency that they are complying with all federal and state purchasing requirements.

Note, DVBE compliance may be required if any State Facility Bond funds are expended on purchases resulting from this bid.

FEDERAL CERTIFICATIONS

The following certifications are required when using federal funds for the purchase of goods and services.

PROPOSER/VENDOR CERTIFICATION FORMS

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

The following provisions are required and apply when federal funds are expended for any contract resulting from this procurement process.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by _____ School District, _____ School District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant 7 CFR 1780.75, when federal funds are expended by a member district, the NCEPC reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The NCEPC also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if in its sole discretion that it is in the best interest of NCEPC to do so. The vendor will be compensated for work performed and accepted and goods accepted by any member district as of the termination date if the contract is terminated for convenience of the NCEPC. Any award under this procurement process is not exclusive and the NCEPC reserves the right to purchase goods and services from other vendors when it is in the best interest of the NCEPC.

Does vendor agree to abide by the above? YES _____ Initials of Authorized Representative of Vendor

(C) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardee to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by a member district, the vendor certifies that during the term of an award for all contracts resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(D) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM

Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (D) above, when federal funds are expended by a member district, the vendor certifies that during the term of an award for all contracts resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(E) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal awardee.

Pursuant to Federal Rule (E) above, when federal funds are expended by a member , the vendor certifies that during the term and after the awarded term of an award for all contracts by a member district resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the

- entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

**IRAN CONTRACTING ACT
 CERTIFICATION OF ELIGIBILITY TO BID FOR CONTRACTS OF \$ 1 MILLION OR MORE
 (Public Contract Code sections 2202-2208)**

Pursuant to Public Contract Code section 2204 (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS
2 CFR § 200.333

When federal funds are expended by a member district for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR §200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by a member district for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.; 49 C.F.R. Part 18; Pub. L. 94- 163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name: _____
Company registered on SAM.gov? Yes _____ No _____
Address, City, State, and Zip Code: _____
Phone Number: _____ Fax Number: _____
Printed Name and Title of Authorized Representative: _____
Email Address: _____
Signature of Authorized Representative: _____ Date: _____

Must be completed and returned with Proposal

SAMPLE BID SCHEDULE

Specifications Due	March 2, 20XX
Advertising Dates	April 23 & 30, 20XX
Prebid Conference (Optional)	May 7, 20XX
Sample Testing (Optional / CNS Bids)	May 8, 20XX – ABC High School Courtyard at 11:00 a.m.
Results of Sample Testing	May 9, 20XX
Questions due from Qualified Bidders	May 14, 20XX
FINAL Addendum to Bidders	May 21, 20XX
Bids Due	May 24, 20XX (2:00 p.m.)
Protest Period Ends	June 1, 20XX
Board Award	June 6, 20XX
Notice of Award	June 7, 20XX
Contract Submittals due to District	June 14, 20XX
Start Date:	July 1, 20XX
Renewal Submittals Due	May 1, 20XX
First Year Term Expires:	June 30, 20XX

■	District
■	Vendors
■	Requesting Department

REQUEST FOR PROPOSALS
for Photography Services(Yearbook)

Advertised in the _____ Daily Transcript May 9 & May 15, 2012

Photography Services for the _____ School District

SUBMITTALS: Four (4) copies must be received on or **before**

ADDRESSED TO: _____

MAILING ADDRESS: _____ School District

RFP SUBMITTAL: Mark envelope:

PROPOSAL FOR PHOTOGRAPHY SERVICES FOR THE _____
SCHOOL DISTRICT:

CATEGORY 1: Yearbook & Senior Pictures and/or

CATEGORY 2: Sports Photography

Proposals shall be submitted in sealed packages with the name of the Firm submitting the Proposal, clearly marked on the front. Submission of the proposal by facsimile or e-mail is unacceptable. The respondent is entirely responsible for delivering the Proposal to the aforementioned office, on time. **Late Proposals will not be accepted.**

PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE SHALL BE RETURNED UNOPENED TO THE PROPOSER.

INQUIRIES: Questions or clarifications for the Request for Proposal documents can be directed in writing to:

[INSERT COMPLETE CONTACT INFORMATION]

Submit questions no later than _____.

NOTICE TO PROPOSERS

NOTICE IS HEREBY GIVEN that the _____ School District of _____ County, California, acting by and through its Governing Board, hereinafter referred to as the "the District" will receive up to, but not later than _____, sealed proposals for:

Category 1: **Senior Pictures and Yearbook Photos**
Category 2: **Sports Photography**

Proposals shall be received by the _____ School District, [INSERT LOCATION AND ADDRESS].

All interested parties may obtain a copy of the RFP by contacting the _____ School District, [INSERT LOCATION, ADDRESS AND PHONE NUMBER], or online at: <http://portal.guhsd.net/index.php/rfp>

Any proposal received later than the specified time, whether delivered in person or mailed, shall be disqualified.

The evaluation criteria specified herein will be used to determine which of the proposals provide the best quality for _____ School District at the most economical cost. The District reserves the right to accept or reject any or all proposals, to waive all technicalities, and to accept the proposal(s) that is determined to be the most favorable to the District. Recognizing that there are important considerations other than price, the District may not necessarily award to the lowest proposer.

Proposals must be effective for sixty (60) days following deadline for the receipt of proposals. Clerk of the Governing Board

_____ School District,
of _____ County, California

INFORMATION AND CONDITIONS

General Conditions

1. Certain specifications are set forth herein for the purpose of establishing minimum standards. Variations which in the opinion of the Governing Board fall below the standards of these specifications will not be allowed, or accepted. Proposers may propose any material or process equal or superior to those specifications herein, but each deviation from the specifications listed must be set forth in detail, and the District shall be the sole judge as to whether such deviation is in fact equal or superior to those set forth herein. The opinion of the District shall be final.
2. Wherever in these specifications any material or process is indicated or specified by patent or proprietary name or by the name of a manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials or process desired and shall be deemed to be followed by the words "or equal".

Conditions and Instructions

1. **Securing Documents:** Specifications and other contract document forms are available without charge to prospective Proposers at the Purchasing Department, _____ School District, [INSERT LOCATION AND ADDRESS] or can be downloaded from the District's website at: _____
2. **Taxes:** The district shall not be responsible for any taxes with the exception of sales tax or use taxes where applicable. Applicable taxes shall be added by the Proposer to his invoice(s), and shall not be included in the proposal.
3. **Assignment of Contract:** The successful Proposer shall agree not to assign, transfer, convey, sublet, or otherwise dispose of the items appearing on this proposal 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 the 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.
4. **Addenda or Bulletins:** Any addenda or bulletins issued by the District during the time of proposal or forming a part of the documents loaned to the Proposer for the preparation of this proposal shall be covered in the proposal and shall be made a part of the contract.
5. **Withdrawal of Proposals Prior to Opening:** Any Proposer may withdraw his proposal, either personally or by a written request, at any time prior to the scheduled time for opening of Proposals.
6. **Withdrawal of Proposals after Opening:** A Proposer may not withdraw his proposal for a period of sixty (60) days after the date set for the opening thereof.
7. **Interpretation of Documents:** If any person contemplating submitting a proposal 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 _____ School 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.

8. **Liquidated Damages:** The District shall hold the successful Proposer liable and responsible for all damages which may be sustained because of his failure to comply with any conditions herein. If the successful Proposer 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 Proposer. Additional costs accrued by the District through this purchase may be deducted from unpaid invoices or must be paid to District by the successful Proposer. Prices paid by the District shall be considered the prevailing market prices at the time such purchase is made.
9. **District Inspection:** All items shall be subject to the inspection of the District. Inspection of the items shall not relieve the Proposer from any obligation to fulfill this contract. Defective items shall be made good by the Proposer, 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 Proposer shall immediately remedy such defect in a manner satisfactory to the District.
10. **Restricted Proposal:** Only those companies fully licensed, equipped and experienced in the work being performed, with skilled personnel immediately available, able to obtain necessary components immediately, shall be considered qualified Proposers for this contract.
11. **Equal Employment Opportunity:** In connection with the execution of this contract, Proposer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Proposer 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. Proposer must sign the AFFIRMATIVE ACTION POLICY which must be attached and become a part of the proposal. **See Attachment C.**
12. **Public Liability and Property Insurance:** Successful Proposer 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 Proposer will be required to furnish certificates of insurance prior to start of work.
 - 12.1 Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): \$1,000,000/\$1,000,000 Aggregate.
 - 12.2 Property Damage Liability Insurance including auto (both owned and non- owned): \$1,000,000 Aggregate.

12.3 Insurance certificate must name _____ School District as additional insured, loss payee.

12.4 Certificate to be submitted by successful Proposer prior to start of work.

13. **Hold-Harmless Clause:** Proposer shall indemnify and hold _____ 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 non-copyrighted composition, secret process, trademark, patented or unpatented invention, article or appliance furnished or used under this quotation.

14. **Tobacco-Free District:** The _____ 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.

15. **IRS Requirements:** The District shall view the legal position of the Proposer as an "independent contractor" and that all persons employed to furnish services are employees of the Proposer and not of the District.

15.1 The District shall not be liable for any of the contractor's acts or omissions performed under the contract to which the Proposer is party.

15.2 The Proposer will complete IRS form W-9 providing tax payer identification number and also indicate whether Proposer is a corporation, sole-proprietor, partnership, individual, etc. This form must be on file with the District within ten (10) days from the date of the contract start date.

DISTRICT PHILOSOPHY AND OBJECTIVE

_____ School District's underlying philosophy is that by granting an exclusive contract(s) for the program, the District improves its potential for reasonable prices for students and consistently high quality services and products.

As used in this RFP, the word "District" represents all entities of the _____ School District and may include schools, Associated Student Body (ASB), school-based student programs, and district-wide programs for students.

SCOPE OF PROPOSAL

The _____ School District (the District) is soliciting proposals from photography service vendors in order to execute a limited exclusive contract or contracts for the _____ fiscal year with three options to renew for an additional one-year term. The purpose of this Request for Proposal (RFP) is to evaluate respondent's experience relative to Photography services.

The District reserves the right to award a contract to one or more proposers providing the best value that is most advantageous to the District for **one or both** categories called for in the scope of the RFP. In order to ensure continuity of appearance, Category 1 and Category 2 photos shall be provided by the respective firms with no cross-over between scopes unless both Categories are awarded to

one firm.

All proposals must be received no later than _____

1. **OBJECTIVE:** The objective of the District is to select a supplier that provides our students with quality products in a timely fashion with courteous customer service. The District intends to select a proposer to provide Photography services that can provide:
 - 1.1. Quality of items as compared to past practices and products.
 - 1.2. Quantity of products available that are commonly purchased by the District.
 - 1.3. Service (i.e. delivery time to the District campuses and troubleshooting).
 - 1.4. Error correction and turn-around time.
 - 1.5. Reasonable pricing for products provided.
 - 1.6. **PROPOSED STUDENT PRICING:** Proposer will furnish a list of proposed prices or transaction fees for all services/materials. The price schedules shall include all costs associated with providing photography services for the term of the contract. Proposals are not to include sales tax.

Providing the highest quality service at the best price for the students is our highest priority. Any additional services offered by proposer will be taken into consideration and weighed per the evaluation criteria.

2. **PERIOD OF CONTRACT:** The contract period will be effective from _____, with the option to renew annually for three (3) additional one- year periods, upon mutual agreement of both parties. Subsequent contract periods will be July 1 through June 30 of each following year, respectively. It is the District's intent for this RFP, any addenda, Firm's proposal, any additional information requested, and negotiated changes to be incorporated by reference into the contract.

If the contract is renewed beyond the first option year, that option year and each additional option year can be subject to a price increase with proper documentation by the firm and approval of District not to exceed 5% per year. Any price increase must be submitted by March 30 prior to renewal.

3. **SCOPE OF SERVICES:** _____ School District has determined that it would be advantageous to establish a contract(s) that can be used by individual schools and school organizations. This will eliminate the need for each school to issue its own RFP and for firms to submit separate proposals to each school. Establish a contract with a responsible firm that can provide yearbook and photographic services to its high schools (Category 1).
 - 3.1. Establish a contract with a responsible firm that can provide sports photography services to its high schools (Category 2).
 - 3.2. Obtain the highest quality photographic services and products for the District's students at the best price.
 - 3.3. Provide for increased efficiency in managing photographic service contracts and to limit the disruption to students' educational programs.

4. **CONTRACT ADMINISTRATOR:** The following employee of District is identified to use all powers under the contract to enforce its faithful performance. All orders from District shall be transmitted and communicated through the Contract Administrator.

[INSERT NAME AND TITLE]

5. **PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:**

5.1. GENERAL REQUIREMENTS:

5.1.1. RFP Response:

In order to be considered for selection, Proposers must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal shall be submitted to District as indicated on the cover sheet. No other distribution of the proposal shall be made by the Proposer.

5.1.2. Proposal Preparation:

5.1.3. Proposals shall be signed by an authorized representative of the Proposer. All information requested must be submitted as called for in the instructions for submission on the bid form and conform to all the requirements of this RFP. Failure to submit all information requested may result in the Purchasing Department requiring prompt submission of missing information and/or giving a lower evaluation of the proposal.

5.1.4. Ownership of all data, materials and documentation originated and prepared for the District pursuant to the RFP shall belong exclusively to the District and be subject to inspection in accordance with the California Freedom of Information Act.

5.1.5. The District may make a final determination regarding a proposal's acceptability solely on the basis of the proposal submitted. However, the District may request additional information from firms and may discuss any facet of the proposal with any firm.

5.1.6. Sample photographs shall be free of firm's logos, name, or any identifying marks.

5.1.7. Oral Presentation: Proposers who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the District. This provides an opportunity for the Proposer to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Contract Administrator will schedule the time and location of these presentations. Oral presentations are an option of the District and may or may not be conducted.

5.2. SPECIFIC REQUIREMENTS:

Proposals should be as thorough and detailed as possible so that the District staff may properly evaluate the firm's capabilities to provide the required services.

5.3. PRICING:

5.3.1. The subsequent contract shall be a firm fixed price contract.

5.3.2. All prices shall be F.O.B. Destination and shall include all charges incurred in fulfilling the terms of this contract.

5.3.3. The Proposer shall submit an itemized list of all proposed costs for the products and services being offered. Pricing Schedules must be provided with your proposal and will be used in the evaluation of process. Proposer shall complete the pricing schedule and additionally provide a complete detail of all proposal products and services offered. New products added after the execution of the contract shall be similar in nature to what is called for in the RFP. Products not falling within the items listed in your response will need to be approved by the Contracts Administrator.

6. SUBMISSION OF PROPOSAL:

- 6.1. Sample photographs that are of the quality your firm is proposing to provide. Photographs for senior pictures must display the background(s) intended for use by your firm at the prices submitted. Size not to exceed 8.5 x 11.
- 6.2. Proposals must be submitted on 8 1/2" x 11" white paper and shall include a table of contents properly indicating the section and page number of the information included.
- 6.3. The proposal signature page must accompany your proposal, with all information supplied and signatures applied as required. The authorized signature should show the title of the person signing the proposal. A person authorized to act on behalf of the vendor must sign the proposal in ink.
- 6.4. A list of at least three (3) references from jobs with school districts, colleges, and/or public agencies including name, address, and telephone number. (Attachment D). Do not list any _____ School District ASB Advisors, Principals, or Vice-Principals as references.
- 6.5. Pricing information

Time is of the essence and any proposal received after the announced time and date for submittal, whether by mail or otherwise, will be rejected and returned unopened. Proposals sent by facsimile will not be accepted. Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for proposals shall be considered non-responsive and deemed unacceptable.

7. GUARANTEE/WARRANTY:

- 7.1. Proposer shall provide a detailed statement of guarantee, replacement policy, **and refund policy. Failure to do so will obligate the proposer to a full** unlimited warranty at the discretion of the District.

8. GENERAL COMPANY INFORMATION:

- 8.1. State the name of your company, home office address, and the name, phone number, fax number, e-mail address, and title of the primary contact person for your proposal.
- 8.2. Describe the organizational structure of your firm, including any relationship with a parent, subsidiary, or affiliated company.
- 8.3. Provide general information regarding your company's financial strength and stability.
- 8.4. How long has your company been providing yearbooks and/or photography services?
- 8.5. How long has your company been providing sports photography services?
- 8.6. Indicate your experience in Photography services including the total number of employees and participants you currently service.
- 8.7. Does your company intend to subcontract any services? If yes, list name and general information of subcontractor(s).
- 8.8. Does your company have a website? If so, provide the universal resource locator (URL).
- 8.9. Number of years in business under current name.
- 8.10. How many projects have you worked on concurrently within the past five years?

9. RECORD KEEPING AND REPORTING

- 9.1. Describe your basic photography services record keeping system with particular reference to control, audit, and the assurance of timeliness and accuracy of records.
- 9.2. Do your system capabilities allow for real-time transactions?
- 9.3. Describe your back-up and disaster recovery procedures.

10. IMPLEMENTATION PLAN

- 10.1. Indicate the responsibilities of the District in the implementation and transition process and the estimated time the District resources will need to dedicate to the project during implementation of Category 1 and/or Category 2 contracts.
- 10.2. How long would the implementation process and issuance take?
- 10.3. Describe the assistance provided to the District staff including time and expected knowledge level of the District staff.
- 10.4. Will your representatives be available on-site for initial implementation meetings and on-going informational meetings?
- 10.5. Will courtesy complimentary Photography services be provided to each high school?

If yes, how many?

If no, please explain.

- 10.6. Will courtesy complementary Photography services be provided to economically disadvantaged students (low-income students qualifying for free or reduced meals)?

If yes, define the process and limitation. If no, please explain.

- 10.7. Are the company and all employees bonded? Provide details.

11. MISCELLANEOUS: Provide any additional information you feel may be relevant in evaluating your proposal.

12. EVALUATION AND AWARD CRITERIA: Proposals shall be evaluated based on the criteria listed hereunder. Information and/or factors gathered during interviews, discussions, and/or negotiations shall also be utilized in the final selection decision. the District reserves the right to waive any and all irregularities and award the contract to the firm or firms, which, in the sole opinion of the District, best fulfills the terms and conditions of this request.

- 12.1. QUALIFICATIONS OF STAFF: Applicants are to provide information adequately describing their specific areas of expertise and other background information, which may be useful in the evaluation process. This section should include résumés of essential individuals who would, in all probability, be involved providing the services requested. Résumés should adequately describe an individual's experience and area(s) of expertise. Information pertaining to professional licenses or certifications held by individuals who will be providing services should also be included in response to this Request for Proposal.

12.2. MANAGERIAL CAPABILITIES:

- 12.2.1. Experience and qualifications of the firm and person(s) assigned to the project.
- 12.2.2. Demonstrated satisfactory completion of similar work.
- 12.2.3. Capability of firm to provide required service given their other existing obligations.
- 12.2.4. Ability to meet desired schedule.

12.3. PAST PERFORMANCE RECORD AND RELEVANT EXPERIENCE:

- 12.3.1. References: reliability, reputation, experience, and efficiency of the firm. District administrative employees represented on the evaluation committee (SB Advisors, Principals, Vice-principals) cannot be listed or provide references.
- 12.3.2. Quality of work, service, and ability to meet desired schedule.

- 12.3.3. Pricing information provided, i.e., schedule of fees.
- 12.3.4. The number and scope of conditions attached to the proposal.

12.4. EVALUATION CRITERIA ASSIGNED WEIGHTS:

<u>Evaluation Criteria</u>	<u>Assigned Weight</u>
Proposed Pricing	40%
Proposed Services/Products	20%
Quality of Materials & Samples	20%
Qualifications & Ability to Perform	15%
Valued Added Services/Items	05%

13. PHOTOGRAPHY SPECIFICATIONS - CATEGORY 1 YEARBOOK & SENIOR PICTURES

13.1. GENERAL CATEGORY 1 REQUIREMENTS (EXCLUDING CATEGORY 2: SPORTS PHOTOGRAPHY):

- 13.1.1. Proposals should be based on a minimum price for black & white photography, a minimum price for all color photography, and /or supplying optional photograph pages for use.
- 13.1.2. All Category 1 photography must be available digitally to site and yearbook staff and be compatible with the existing PIMS badge software and equipment or Proposer shall furnish equipment and software for the purpose of creating ID cards/badges.
- 13.1.3. Badge software must allow for customization of ID cards/badges for specialty groups including addition of logos, color choice, etc.
- 13.1.4. The photographer must be able to communicate effectively with staff and students.
- 13.1.5. Category 1 photographs for the must be returned to the school within fourteen (14) days of being taken, for publisher deadline purposes. Excessive and repeated late deliveries will result in enforcement of Article 8 of the Conditions and Instructions.
- 13.1.6. All packages should be returned to the campus alphabetized by the student's name and packed per teacher or as requested by individual schools.
- 13.1.7. All re-takes and make-up photographs will be taken at each campus. The successful proposer will contact the principal or representative to schedule a date. Proposer will contact the site within thirty (30) days of execution of contract.
- 13.1.8. The successful Category 1 proposer will provide the school, at no charge, personnel, and proper equipment to take all group pictures (staff, club, etc.) for the yearbook excluding sports team pictures. Also, these pictures will be taken according to the school's schedule.
- 13.1.9. Advance advertising shall be required using handouts, posters, and package examples, etc. Although the photographer will work in conjunction with the yearbook staff advisor on this, the photographer will be ultimately responsible for selling all photography packages.

13.2. CATEGORY 1 PHOTOGRAPHY REQUIREMENTS FOR SENIORS:

- 13.2.1. The yearbook requires digital photographs of each senior student for the yearbook.
- 13.2.2. The awarded proposer will contact the yearbook advisor at each school in order to obtain yearbook deadline dates.
- 13.2.3. The awarded proposer will schedule with the principal or representative a time to meet with the junior class to arrange for senior portraits to be taken during the summer before their senior year.
- 13.2.4. Senior portraits will be taken during the summer at a studio or site to be located within a ten-mile radius of the GUHSD District Office, 1100 Murray Drive, El Cajon, CA.
- 13.2.5. Background poses and clothing for senior portraits for the yearbook will be decided by the advisor, principal, and photographer.
- 13.2.6. Seniors will get at minimum six poses/proofs from which to choose their final portrait selections.
- 13.2.7. Seniors will be allowed to order extra photographs other than the designated packages.
- 13.2.8. Re-takes and make-up pictures will be of the same quality and taken under the same setting as all other senior pictures.

13.3. CATEGORY 1 PHOTOGRAPHY REQUIREMENTS FOR UNDERCLASS- PERSON:

- 13.3.1. The yearbook requires digital photographs for each underclassman. Each student must be identified on the photography.
- 13.3.2. Underclassperson photographs will be taken during the school year at each campus. Dates will be decided by the photographer, advisor, and principal(s) and may flow over a 2-3 day period.

13.4. CATEGORY 1 PHOTOGRAPHY REQUIREMENTS - GENERAL

13.4.1. INDIVIDUAL STUDENT & CLASS GROUP PICTURES:

- 13.4.1.1. Pictures will be taken twice a year at each site. Dates to be coordinated with Principal or ASB Advisor.
- 13.4.1.2. All pictures will be packed and alphabetized by students and teacher for delivery.
- 13.4.1.3. All pictures will be guaranteed to the satisfaction of the school and parents.
- 13.4.1.4. The photography company must offer optional retouching at the parents/student's request and delineate charges on the pricing package for said service.
- 13.4.1.5. The photography company will handle all complaints and adjustments on pictures.
- 13.4.1.6. All individual picture package prices will include applicable sales tax.
- 13.4.1.7. The school will be provided displays and take home notices for all students and staff approximately two weeks prior to the picture taking date. The chosen picture date will be decided upon by the principal. All other time schedules and the delivery of pictures will be discussed with the principal. All information concerning picture covers (photo covers, photo sleeves, or picture sleeves) for group pictures will be discussed with the principal.
- 13.4.1.8. A representative(s) of the photography company will handle all monies involving the pictures.

- 13.4.1.9. All prices on re-orders to be the same as original price.
- 13.4.1.10. Each faculty member will receive a complimentary group picture package.
- 13.4.1.11. Proposer will furnish risers, background curtain, and name board for class group pictures.

13.4.2. CLASSROOM IMAGE REQUIREMENTS

- 13.4.2.1. The District will provide required student information for I.D. cards and specifications for CD-Rom Image CDs.

13.4.3. EVENT PHOTOGRAPHY REQUIREMENTS

- 13.4.3.1. Event schedules are subject to change; therefore Proposer shall be prepared to provide personnel for rescheduled events with 72-hour notice.
- 13.4.3.2. Proposer shall provide a photographer at all extra-curricular activities as necessitated by the Principal and/or ASB Advisor, including dances and special events, excluding sporting events.

13.4.4. PACKAGES

- 13.4.4.1. Firm must offer pre-paid packages as defined below. Other photographic options and packages may be offered so long as the packages defined are included in the proposal:

Package A:	Package B:	Package C:	Package D:
2 - 3" x 5"	1 - 5" x 7"	2 - 5" x 7"	1 - 8" x 10"
2 - 2" x 3"	2 - 3" x 5"	2 - 3" x 5"	2 - 5" x 7"
8 - 1.5" x 2.5"	4 - 2" x 3"		2 - 3" x 5"
	8 - 1.5" x 2.5"		4 - 2" x 3"
			8 - 1.5" x 2.5"

14. CATEGORY 2: SPORTS PHOTOGRAPHY REQUIREMENTS

14.1. INDIVIDUAL ATHLETE & TEAM PICTURES:

- 14.1.1. A minimum of two (2) of each type of sporting event will be photographed for yearbook purposes. (e.g. Two varsity football games, two junior varsity footballs, two varsity basketball games, two junior varsity basketball games, etc.)
- 14.1.2. The successful proposer for Category 2 will provide team photos as directed by the principal or designee. All Category 2 photography must be available digitally to site.
- 14.1.3. The Category 2 proposer will provide all sports photography for yearbook purposes. Sport photographers holding a valid press pass or on assignment for the California Interscholastic Federation (CIF) will be permitted on the field, but will not have resale rights on campus. The successful Category 2 may sell pictures to students off campus.
- 14.1.4. The successful proposer for Category 2 will provide the school, at no charge, personnel, and proper equipment to take all sports team photos for the yearbook. These pictures shall be taken in accordance with the school's schedule.
- 14.1.5. All pictures will be guaranteed to the satisfaction of the school and parents.
- 14.1.6. The photography company will handle all complaints and adjustments on pictures.
- 14.1.7. All individual picture package prices will include applicable sales tax.
- 14.1.8. All other time schedules and the delivery of pictures will be discussed with the

principal or designee.

14.1.9. A representative(s) of the photography company will handle all monies involving the pictures.

14.1.10. All prices on re-orders to be the same as original price.

14.1.11. Each head coach will receive a complimentary team picture.

15.0 VALUE ADDED:

Because the costs associated with public education have been increasing while state and local funding have been decreasing, we are asking that Proposers who do business with the District help bridge the gap. As part of this Request for Proposal, the District is seeking voluntarily, at your own discretion, any “value added” services or support that you, the proposer, feel would be helpful to our schools.

The District considers “value added” to include, but not limited to, the following:

- Donations of service such as mentoring students, volunteering in schools or departments, and performing in-kind services to supplement services the District already provides.
- Tangible items such as dance bids and the design and print services for such bids (Category 1 firm).
- Funding assistance such as scholarships, donations of money to District schools or programs, donations of money to the District, sponsorship, and/or advertising of District schools or programs.
- Photos of all district administrators for administration purposes (estimated 100) (Category 1 firm).
- Donations of new and usable supplies and/or equipment.
- Other: Innovative considerations.

DISCLAIMER: Nothing in this contract shall preclude any parent from requesting a private photography session or purchasing items outside the scope of this limited exclusive agreement from the awarded firm or firms.

RENEWAL

If mutually agreeable, the _____ School District reserves the right to consider the extension of this contract for a one-, two-, or three-year period. A price increase, if exercised, shall be fully justified by vendor and proved by a test of the market and/or submission of documents. Price increases shall **not exceed more than 5%** per year.

Bidder to indicate in space provided if it would accept option to renew for the following periods and at what percentage:

Category 1: **Senior Pictures and Yearbook Photos**

Dates	Yes	No	Max. % Increase
7-1-13 to 6-30-14	_____	_____	_____
7-1-14 to 6-30-15	_____	_____	_____
7-1-15 to 6-30-16	_____	_____	_____

Category 2: **Sports Photography**

Dates	Yes	No	Max. % Increase
7-1-13 to 6-30-14	_____	_____	_____
7-1-14 to 6-30-15	_____	_____	_____
7-1-15 to 6-30-16	_____	_____	_____

Having carefully examined the Proposal Notice, Terms, Conditions, Specifications, and Proposal Form, the undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the specifications and conditions at the prices quoted unless noted in writing.

The undersigned affirms that they are duly authorized to execute this proposal and that this company, corporation, firm, partnership, or individual has not prepared this proposal in collusion with any other proposer.

ADDENDA (if any): Issued in accordance with the Instructions to Proposers, the undersigned acknowledges receipt of Addenda Nos. _____ dated _____.

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

PROPOSAL FORM

Submission Instructions: The District will be conducting a blind review process in order to perform an objective evaluation. Proposers are to submit their responses as follows:

1. Proposal form, proposal response including methodology of proposed services, and samples are to be placed in an unmarked envelope. None of the documents are to identify Proposer in any way. Any image that may depict the proposer's identifying marks, logo, name, etc. will have their proposal deemed to be non-responsive.
2. Information about the Proposer such as General Company Information, References, Resumes, and any other information that includes the identity of the Proposer shall be sealed in a second envelope and placed in the envelope containing responses listed under Item 1.

ATTACHMENT A

CATEGORY 1: SENIOR PICTURES AND YEARBOOK PHOTOS

PACKAGE	DESCRIPTION	PRICE
Package A	2 - 3" x 5" 2 - 2" x 3" 8 - 1.5" x 2.5"	
Package B	1 - 5" x 7" 2 - 3" x 5" 4 - 2" x 3" 8 - 1.5" x 2.5"	
Package C	2 - 5" x 7" 2 - 3" x 5"	
Package D	1 - 8" x 10" 2 - 5" x 7" 2 - 3" x 5" 2 - 2" x 3" 8 - 1.5" x 2.5"	
ADDITIONAL PACKAGES OFFERED:		
Package ___		
Package ___		
Package ___		

Attach additional pages if necessary.

ATTACHMENT B

**CATEGORY 2: SPORTS PHOTOGRAPHY
PROPOSAL FORM**

PACKAGE	DESCRIPTION	PRICE
Individual Photo	Size	
Individual Photo	Size	
Individual Photo	Size	
Individual Photo	Size	
Individual Photo	Size	
Individual Photo	Size	
Team Photo	Size	
Team Photo	Size	
Additional Photos Offered: (Please list)		

Attach additional pages if necessary.

Value Added:

List any value added services proposer is willing/able to provide based on the above pricing. Note: Pricing to students is of the utmost importance and will have a weight of up to 40 points out of 100 total possible points. Value Added items will be scored at no more than 5 total points.

1.0 _____

2.0 _____

3.0 _____

4.0 _____

5.0 _____

6.0 _____

7.0 _____

ATTACHMENT C

AFFIRMATIVE ACTION POLICY

The Affirmative Action Policy adopted by the Governing Board of the _____ School District requires that a copy of the statement below be on file in the Purchasing Department for every person, firm, company or corporation with whom the District does business, regardless of the dollar value of the contract.

"Contractor hereby certifies to the _____ School District that I (if individual) or we (if company or corporation) do not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex as outlined in California Government Code Section 12940."

Proper name of Individual, Company or Corporation

By _____

Title _____

Address _____

Telephone _____

Email _____

Date _____

ATTACHMENT D

REFERENCES

Per Article 6.4, list at least three references of contracts with school districts, colleges, and/or public agencies within the last five years.

Name of Organization			
Address	City	State	Zip Code
Telephone		Fax Number	

Name of Organization			
Address	City	State	Zip Code
Telephone		Fax Number	

Name of Organization			
Address	City	State	Zip Code
Telephone		Fax Number	

ATTACHMENT E

Agreement for Access to Student Information for the Purposes of Conducting Contracted Work for the District

_____ (hereafter referred to as "Contractor"), hereby acknowledges and agrees that the personally identifiable student information ("Student Information"), a detailed description of which is attached, being disclosed to it by _____ School District ("District") is for the limited purpose of conducting work as described in the attached agreement and will be used only for that purpose.

Further, the Contractor is subject to compliance with all relevant laws and regulations pertaining to the possession and maintenance of such Student Information, including, but not limited to the Federal Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g and 34 CFR Section 99 et. seq., and in particular 34 CFR 99.33 pertaining to the disclosure of personally identifiable information from education records, and the Washington RCW 28A.605.030 and RCW 42.17.310.

The Contractor further is required to maintain the confidentiality of the Student Information provided and not to disclose personally identifiable information about a student including photos to any other party without the prior written consent of the parent or eligible student or as is otherwise authorized by law or regulation. The Contractor also agrees to defend, indemnify and hold harmless the District, its officers, employees and agents, from any and all complaints, charges, causes of action, claims, or damages of every kind and nature whatsoever relating to an improper release of the Student Information by the Contractor or its employees or agents.

It is further acknowledged and agreed that when the work contracted with the District has been completed, all Student Information will be destroyed and no copies or other retention of the personally identifiable Student Information will be maintained.

The undersigned hereby certifies that he/she has the authority to execute this document on behalf of the Contractor.

Company

By: (Signature)

Name

Date

ATTACHMENT F AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the _____ School District, _____ 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 Proposers, the Information to Proposers, the Accepted Proposal, the 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. **SERVICES, MATERIALS AND SUPPLIES:** The contractor agrees to furnish the service or services, the item or items of the stated proposal 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. It is understood by the Contractor that all items or service will be promptly delivered to the District.
3. **PAYMENTS.** The contractor shall receive payment resulting from the sale of photo packages to the individual. The District is not liable for any unmade payments to Contractor.
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. **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.

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.

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.

_____ SCHOOL DISTRICT

_____ CONTRACTOR

Signature of Authorized Agent

Signature of Authorized Agent

Typed or Printed Name

Typed Name

Title

EIN or Last 4 Digits of SSN (Attach W-9)

Board Approval Date: _____

(Area Code) Telephone Number



**DISTRICTWIDE WEB-BASED
STUDENT
INFORMATION SYSTEM
GU-14.SIS**

June 13, 2013

**PURCHASING DEPARTMENT
1100 MURRAY DRIVE
EL CAJON, CA 92020**

**REQUEST FOR PROPOSAL FOR
DISTRICTWIDE WEB-BASED STUDENT INFORMATION SYSTEM**

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 pm, July 23, 2013**, sealed proposals for:

**DISTRICTWIDE WEB-BASED STUDENT INFORMATION SYSTEM
GU-14.000.SIS**

Proposals must respond to the specifications described in this RFP. The proposal process, terms and conditions will be in strict accordance with the requirements and guidance contained herein.

Questions may be submitted in writing on or before **4:00 p.m. on July 5, 2013**, by mail, fax or email to the attention of Guiselle Carreon, Director of Purchasing, P.O. Box 1043, La Mesa, CA, 91944-1043, Fax: (619) 460-0963, email: gcarreon@guhdsd.net

Timeline:

Issue Request for Proposals:	June 13 & 20, 2013
Deadline for Submission of Questions to the District (4:00 p.m.):	July 5, 2013
District Response to Written Questions (if necessary):	July 12, 2013
Submittal Deadline (2:00 p.m.):	July 23, 2013
Notification of Vendors Selected for Demo	August 5, 2013
System Demonstrations	August 19-21, 2013
Board Award Date:	September 12, 2013
Notice to Proceed:	September 20, 2013
Start Date:	September 23, 2013

Your complete proposal, including all information herein requested, must be delivered to the District's office at the following address:

Purchasing Department
1100 Murray Drive
El Cajon, CA 92020

Proposals must be in writing, **received and time-stamped at the District's office** no later than **2:00 p.m. on Tuesday, July 23, 2013**. Clearly specify "**Response to RFP for GUHSD DISTRICTWIDE WEB-BASED STUDENT INFORMATION SYSTEM**." Proposals received later than the above date and time will be rejected and returned to the submitting vendor(s). The District will not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in the Request for Proposals.

The successful vendor(s), if any, will be the one(s) whose proposal is most responsive to this RFP, and is deemed to be to the best advantage of the District. Proposals must be valid for ninety (90) days after the proposal due date. The District reserves the right to modify and/or suspend any and all aspects of this procurement, to obtain further information from any vendor or person responding to the RFP, to waive any informality or irregularity as to form or content of this RFP or any response thereto, to be the sole judge of the merits of the Proposals received, and to reject any or all Proposals.

INTRODUCTION

The Grossmont Union High School District (hereafter the District) seeks to enter into a multi-year agreement with a qualified vendor who will provide and implement a modern Districtwide Web-Based Student Information System that meets the varied needs of the District's schools while providing ease of use for teachers, standardized processes for office staff, clear and concise information to parents, integration with mobile devices, compliance with State and Federal regulations and reporting requirements, flexibility as necessary to meet the needs of administration, and access using industry standard tools to information for use in making data-driven decisions.

Background

The District provides education to students in grades 9-12 and is located in the eastern portion of San Diego County. The District was established in 1920 and encompasses an area of approximately 465 square miles, including all of the cities of El Cajon, Santee and Lemon Grove, most of the city of La Mesa, a small portion of the city of San Diego, and the unincorporated areas of Alpine, Dulzura, Jamul, Lakeside, and Spring Valley.

The District consists of nine comprehensive high schools, one continuation high school, one alternative education site, three special education facilities, a middle college high school program, a Regional Occupational Program (ROP) and an Adult Education program. Approximately 20,000 students attend the District's schools. Approximately 53 percent of the high school students are Caucasian and 47 percent come from Latino, African-American, Asian, Filipino, Pacific Islander, and Native American backgrounds. With more than 2,000 full-time employees in the District, combined with hundreds of hourly employees, the District is the largest employer in the East County.

INFORMATION FOR PROPOSERS

1. **Securing Documents:** The Request for Proposals can be downloaded from the District's website at: <http://www.guhsd.net/index.php/rfp>
2. **Taxes:** The District shall not be responsible for any taxes with the exception of sales tax or use taxes where applicable. Applicable taxes shall be added by the Proposer to his invoice(s), and shall not be included in the proposal.
3. **Assignment of Contract:** The successful Proposer, as Contractor, shall agree not to assign, transfer, convey, sublet, or otherwise dispose of the items appearing on this proposal form, which they may be awarded, or any rights accruing there under, title or interest therein, funds to be received hereunder, or any power to execute the same without the consent in writing of the District's Governing Board. Notice is hereby given that the District will not honor any assignment made by the Contractor unless consent in writing, as indicated above, has been given.
4. **Addenda or Bulletins:** Any addenda or bulletins issued by the District during the time of proposal or forming a part of the documents loaned to the Proposer for the preparation of this proposal shall be covered in the proposal and shall be made a part of the contract. Proposer shall acknowledge all addenda issued during the solicitation period. Addenda will be posted online at: <http://www.guhsd.net/index.php/rfp>
5. **Agreement:** The form of agreement, which the Successful Proposer, as Contractor, will be required to execute, is included in the contract documents and should be carefully examined by the proposer. The agreement will be executed in two (2) original counterparts. The complete contract consists of the following documents: 1) The Notice of Request for Proposals, 2) the Information for Proposers, 3) the Accepted Proposal, 4) the Specifications, 5) the Agreement, including all modifications thereof duly incorporated therein, and the 6) Purchase Order, if applicable. 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 and transportation necessary for the proper delivery of all services called for in the Contract.
6. **Withdrawal of Proposals Prior to Opening:** Any Proposer may withdraw his proposal, either personally or by a written request, at any time prior to the scheduled time for opening of Proposals.
7. **Withdrawal of Proposals after Opening:** A Proposer may not withdraw his proposal for a period of ninety (90) days after the date set for the opening thereof.
8. **Cancellation of Proposal:** District may cancel this solicitation at any time.
9. **Authorized Signatures:** Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work.
10. **Compliance with Law:** All proposals shall comply with current Federal, State, and other laws relative thereto.
11. **Interpretation of Documents:** If any person contemplating submitting a proposal 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 Grossmont Union High School 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 will be posted to the District's website at <http://www.guhsd.net/index.php/rfp>. The District will not be responsible for any other explanation or interpretation of the proposed documents.

12. **Proposers Interested in More Than One Proposal:** No person, firm or corporation shall be allowed to make or file or be interested in more than one proposal for the same work, unless alternate proposals are called for. A person, firm or corporation submitting a sub-proposal to a proposer, or who has quoted prices on materials to a proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other proposers.
13. **Non-Collusive Declaration:** The form of such declaration is included as part of the contract documents. Each Proposer shall execute the declaration and submit it with his/her sealed proposal.
14. **Hold Harmless:** The successful firm agrees to defend and hold harmless the Grossmont Union High School District, its Governing Board, officers, agents and employees, individually and collectively, from and against all costs, losses, claims, demands, suits, actions, payments and judgments, including legal and attorney fees, arising from personal or bodily injuries, property damage or otherwise, however caused, brought or recovered against any of the above that may arise for any reason from or during or be alleged to be caused by the successful firm's performance of professional services set forth herein. The successful firm further agrees to provide a Certificate of Insurance for liability coverage and limits acceptable to the District.
15. **Conflicts Check:** The District reserves the right, before any contract award is made, to require any firm to whom it may make a contract award, to do a conflicts check and disclose all actual and potential conflicts to the District. In the event a conflicts check is required, the District will provide a list of major vendors doing a significant amount of business with the District. The potential Contractor must disclaim in writing any conflict of interest. Furthermore, the District reserves its rights to reject the selected firm, if its conflicts check reveals actual conflicts, and go to the next preferred firm.
16. **Ink or Typewritten:** All information, prices, notations, signatures, and corrections must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the proposal.
17. **Liquidated Damages:** In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the District's operations, to the loss and damage of the District. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The District and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount of one thousand dollars (\$1,000.00) per day, and the District and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the District as liquidated damages may be deducted by the District from any money payable to the Contractor. The District shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date District deducts such sums from money payable to the Contractor.

18. **District Inspection:** 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 immediately remedy such defect in a manner satisfactory to the District.
19. **Restricted Proposal:** Only those companies fully licensed, equipped and experienced in the work being performed, with skilled personnel immediately available, able to obtain necessary components immediately, shall be considered qualified Proposers for this contract.
20. **Independent Contractor:** In accepting this contract, Successful Proposer (hereinafter Contractor) covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of the District. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent Contractors and not agents of District.
21. **Equal Employment Opportunity:** In connection with the execution of this contract, Proposer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Proposer shall take affirmative actions to ensure 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.
22. **Public Liability and Property Insurance:** Successful Proposer, as Contractor, 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. Contractor will be required to furnish certificates of insurance prior to start of work.
 - 22.1. Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): \$1,000,000/\$1,000,000 Aggregate.
 - 22.2. Property Damage Liability Insurance including auto (both owned and non-owned): \$1,000,000 Aggregate.
 - 22.3. Insurance certificate must name Grossmont Union High School District as additional insured, loss payee.
 - 22.4. Certificate to be submitted by Contractor prior to start of work.
 - 22.5. Proof of Workers Compensation Insurance
23. **Hold-Harmless Clause:** Proposer 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

non-copyrighted composition, secret process, trademark, patented or unpatented invention, article or appliance furnished or used under this quotation.

- 24. 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.
- 25. IRS Requirements:** The District shall view the legal position of the Proposer as an "independent Contractor" and that all persons employed to furnish services are employees of the Proposer and not of the District.
 - 25.1.** The District shall not be liable for any of the Contractor's acts or omissions performed under the contract to which the Proposer is party.
 - 25.2.** The Proposer will complete IRS form W-9 providing taxpayer identification number and also indicate whether Proposer is a corporation, sole-proprietor, partnership, individual, etc. This form must be on file with the District within ten (10) days from the date of the contract start date.

End of Information for Proposers

GENERAL CONDITIONS

1. **Minimum Standards:** Certain specifications are set forth herein for the purpose of establishing minimum standards. Variations, which in the opinion of the Governing Board fall below the standards of these specifications, will not be allowed or accepted. Proposers may propose an alternative equal or superior to those specifications herein, but each deviation from the specifications listed must be set forth in detail, and the District shall be the sole judge as to whether such deviation is in fact equal or superior to those set forth herein. The opinion of the District shall be final.
2. **Brand Name:** Wherever in these specifications any material or process is indicated or specified by patent or proprietary name or by the name of a manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials or process desired and shall be deemed to be followed by the words "or equal."
3. **Representations:** No representations or guarantees of any kind, made orally, expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. Vendors must rely solely on its own independent assessment as the basis for the submission of any offer made.
4. **Cost of Proposal:** The District is not responsible for any costs incurred by Proposer in preparation of a response to this Request for Proposals.
5. **Confidentiality:** The Contractor warrants that it will retain all information belonging to the District in the strictest confidence, and will neither use nor disclose it to anyone without the explicit written permission of the District, and that each and every employee of the Contractor has executed a binding agreement to the same effect. The Contractor recognizes that irreparable harm can be occasioned to the District by disclosure of information relating to its business and, accordingly, that the District may enjoin such disclosure. The District shall from time to time furnish the Contractor lists of authorized personnel who may be permitted access to information in the files held by the Contractor organization and Contractor agrees not to permit any access thereto to any District personnel except those so listed.

The District owns the data submitted to the Contractor(s). The District has the right to recover, in a suitable form, a copy of all of its proprietary data upon expiration or termination of the agreement for any reason.

6. **Statement of Confidentiality:** Responses to this RFP become the exclusive property of the District upon receipt. All proposals received in response to this RFP become a matter of public record and shall be regarded as public records. A Proposer may designate elements in its proposal which are defined as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary."

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the District may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the District will provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

7. **Private Data:** Software License Terms must address Protection of Student Education Records and Ownership of District Data and Information in each of the following areas:

a) Private Data: Private data and information ("Private Data") includes paper and electronic student education record information supplied by District, as well as any data provided by District students to the Contractor, which is protected by federal and state law, including, but not limited to, 20 U.S.C. section 1232(g) and Education Code sections 49060, et seq. Contractor acknowledges that the Agreement allows the Contractor access to Private Data. Both District and Contractor certify that they will abide by state and federal laws concerning confidential student education records.

b) Prohibition on Unauthorized Use or Disclosure of Private Data: Contractor agrees to hold Private Data in strict confidence. Contractor shall not use or disclose Private Data received from, or on behalf of, District except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by District. Contractor agrees that it will protect the Private Data it receives from, or on behalf of, District according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

c) Return or Destruction of Private Data: Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return all Private Data to District, or if return is not feasible as determined by District in written notice to Contractor, destroy any and all Private Data.

d) Maintenance of the Security of Electronic Information: Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Private Data received from, or on behalf of, District or its students. These measures will be extended by contract to all subcontractors used by Contractor.

e) Reporting of Unauthorized Disclosures or Misuse of Private Data: Contractor, within one day of discovery, shall report to District any use or disclosure of Private Data not authorized by the Agreement or in writing by District. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Private Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what Contractor has done or shall do to mitigate any effect of the unauthorized use or disclosure; and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, requested by District.

f) Indemnity: Contractor shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorneys' fees, which arise as a result of Contractor's failure to meet any of its obligations under this Article.

g) All data and information provided to Contractor by, or on behalf of, District pursuant to this Agreement shall remain the property of the District.

8. 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.

- 9. Termination of Agreement for No Cause:** District may terminate this Agreement at anytime by giving the Contractor thirty (30) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for goods or services satisfactorily rendered prior to the effective date of said termination, Contractor shall be entitled to no further compensation or payment of any type from the District.

PROPOSAL FORMAT AND CONTENT

1. Economy of Preparation

The submission of proposals will consist of information provided in the format defined in the Request for Proposals (RFP) documents. They should be prepared simply and economically, providing a straightforward and concise explanation of capabilities that will satisfy the requirements of the RFP. Technical literature, including samples of similar work performed and other elements of service providers' support, may be included in an optional volume of the RFP. Emphasis in the submission of the RFP should be placed on completeness and clarity of content. Submission of the RFP should be prepared on standard 8-1/2 x 11 paper and placed in binders with tabs separating the major sections.

2. Cover Letter

- Identify core team
- Provide name of contact person, phone number and fax number
- Summarize Proposers' history and projects most relevant to the District project

3. Table of Contents

Sections and page numbers for requested information.

4. Executive Summary

Responses shall demonstrate how they summarize the Proposer's overview of the project and indicate the project's complexity and the Proposer's ability to resolve inherent project problems.

5. General Information about Proposer

Provide general information as called for in the section entitled Information for Proposers.

6. Financing and Financial Resources

Include separately the Proposer's income statements, balance sheets and related materials for the last two (2) years. Any past bankruptcies must be noted and explained.

7. References

Submit information regarding five (5) comparable K-12 projects that the vendor has completed as the Prime Contractor within the last four (4) years. The projects shall indicate the start and completion dates, services and equipment provided, project costs, contract term, warranty, and benefits to the owner. Provide the owner's name, address, telephone number, and contact person for each reference. Proposers must include at least one California K-12 school district of equal or greater size than the Grossmont Union High School District.

8. Proposal Requirements

The vendor shall submit a Technical Proposal and Price Proposal. The Technical Proposal shall consist of the company's experience, past performance, management and organization of the company, and proposed personnel.

The vendor will submit a Price Proposal for proposed services on Bid Quotation Form. The price proposal shall consist of all costs associated with the Scope of Work.

All work proposed to be completed by the Contractor must be clearly outlined. If any of the above referenced qualifications are being wholly or partially fulfilled by a stated sub-Contractor(s), then that must be noted in the bid response.

List the name of any subcontractor(s) or equipment supplier and the location of the place of business of each subcontractor who will perform labor or render service used by the vendor shall be clearly noted in the bid document.

SUBMISSION OF PROPOSAL

1. Copies

One original and four (4) copies must be submitted on or before the Submittal Deadline. Proposers shall submit one (1) original proposal marked "MASTER" and all required copies shall be identical to Master. Envelopes containing the original and the copies should be marked in accordance with the directions found elsewhere in these instructions. Proposers shall also submit an electronic copy in the package.

2. Discrepancies

If discrepancies are found between the copies, or between the original and copy or copies, the original "MASTER" will provide the basis for resolving such discrepancies. If one document is not clearly marked "MASTER," the District reserves the right to use the original as the Master.

3. Proposal Deadline

Proposals may be submitted any time before the Submittal Deadline. Proposals that do not arrive by the Submittal Deadline will be late and will be returned to the Proposer unopened.

4. Proposal Modifications

Any Proposer who wishes to make modifications to a proposal already received by the District must withdraw his proposal in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this solicitation. All modifications must be made in ink, properly initialed by Proposer's authorized representative, executed, and submitted in accordance with the terms and conditions of this solicitation. It is the responsibility of the Proposer to ensure that modified or withdrawn proposals are resubmitted before the Submittal Deadline.

5. Proposal Opening and Results

No Public Opening. Proposals will not be opened publicly, but a list of the names of companies submitting proposals will be available within a reasonable time after the Submittal Deadline.

6. Proposal Prices, Notations, and Mistakes

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the Proposal. Prices shall be stated in units and offers made separately on each item. In case of conflict between unit prices and extended prices, unit prices will govern.

EVALUATION OF PROPOSAL

Criteria and Evaluation of Proposals

The process for selection shall occur as follows:

- Review Proposals
- Establish a "short list" of qualified firms
- Product demonstrations
- Identification of the best qualified firm
- Award contract

An RFP Selection Committee, *as deemed necessary*, will be formed to evaluate the proposals and to make recommendation to the Governing Board. Composition and creation of this committee, should one be formed, is at the sole discretion of the District.

The selection will be made based on the following scale:

Criteria	Weight
Functionality/Suitability	50%
Compliance with General Requirements	
Compliance with Detail Requirements	
Technical Architecture	
References	
Price	20%
Non-recurring charges	
Software	
Modifications	
Customizations	
Training	
Recurring charges	
Support	
Maintenance	
Professional Services	15%
Data Conversion	
Implementation	
Management	
Support	10%
On-going customer service	
System upgrades	
Training	
Maintenance	
Troubleshooting	
Organizational Strength/ References	5%
Number of Clients	
School District Experience	
Stability	

SCOPE OF WORK

1. Project Scope

The scope of this project is to

- Replace the District's current SIS with a full-featured SIS that meets GUHSD requirements
- Convert existing District data into the new SIS
- Provide implementation planning, scheduling and support
- Provide comprehensive training on-site to teachers, school site staff, administrators and other SIS users and support personnel
- Provide project management of above-listed activities

2. General Requirements

- 2.1. System is currently in use in five (5) or more districts in California that contain high schools
- 2.2. System is currently in use in fifty (50) or more high schools in California
- 2.3. Provide a secure web-based solution accessible from inside and outside the District's network that is compatible with all browsers
- 2.4. All system functionality and components available to users must be accessed through a single application, a single user interface
- 2.5. System provides single centralized industry standard database hosted by GUHSD
- 2.6. System provides open system architecture permitting integration with other systems
- 2.7. System provides online registration and re-registration for students
- 2.8. System provides a parent portal
- 2.9. System provides a student portal
- 2.10. System provides users a view of school boundaries
- 2.11. System provides a comprehensive solution for management of all student data including but not limited to demographic, discipline, health, fees and fines information
- 2.12. System provides for the recording and presentation of student achievement data including but not limited to GPA, CAHSEE, CELDT, CST, AP Tests, IB Tests, etc.
- 2.13. System provides an open enrollment / choice enrollment process taking into account local processes as well as Program Improvement / 1,000 schools mandates from CDE
- 2.14. System supports multiple calendars and bell schedules per school
- 2.15. System supports multiple school year types such as semester, quarter, etc.
- 2.16. System supports summer school, intersession and other special programs
- 2.17. System supports multiple attendance models per school
- 2.18. System provides a data extraction and reporting tool capable of including and operating on all data recorded in the system
- 2.19. System provides an integrated grade book
- 2.20. System provides master schedule and student scheduling options that provide for individual and cohort management based on educational program criteria and specific data characteristics
- 2.21. System provides custom-defined categories to track school-based activities (sports, awards, honors, clubs, other extracurricular activities, etc.)
- 2.22. System configuration allows for school information to change year to year

- 2.23. System provides District managed tables in support of drop-down lists for all critical data
- 2.24. Inclusion and conversion of all historical student system data
- 2.25. System provides mobile device functionality including but not limited to student lookup, attendance and grade entry
- 2.26. System provides audit trail and logging of all data changes that is available online and via reports
- 2.27. System provides prevention of multiple overlapping primary enrollments while permitting a student to have secondary enrollments and thus attend multiple schools
- 2.28. System provides full integration and compliance with ALL CALPADS reporting requirements including Fall 1, Fall 2, Spring, EOY 1, EOY 2, EOY 3, EOY 4
- 2.29. System supports ALL CDE authorized attendance models electronically including positive, negative, period, hourly, daily, independent study and backfill / carry back hours
- 2.30. System is currently certified by CDE for electronic attendance and signature submission at multiple districts and school sites
- 2.31. System provides preparation of data as required for submission of Principle Apportionment at P1, P2 and Annual
- 2.32. The system will offer data extraction and uploading, and provide/accept data in industry standard data formats
- 2.33. SIS database shall be accessible via industry standard 3rd party tools
- 2.34. System provides inclusion of functionality described in the attached detail requirements

3. Detail Requirements

- 3.1. The District's detailed functional requirements are described in **Attachment A, SIS RFP Requirements**. The attachment contains a Table of Contents tab, which refers to the subjects contained on the additional tabs. The additional tabs contain an item number, feature description and indicator showing if the feature is required or desired by the District. **Proposers should review each detailed item on tabs one through nine, and enter a response in the Availability column for each item.**

The following values are allowed as a response:

- "Y" – The functionality exists in the current version of Proposer's SIS.
- "N" – The functionality will be available in the next regularly scheduled release of Proposer's SIS.
- "R" – The functionality is on Proposer's long-term development road map for Proposer's SIS.
- "C" – The functionality is not on Proposer's road map and would require custom work to implement in Proposer's SIS.
- "N/A" – The functionality is not applicable to Proposer's SIS.

Proposers may enter additional, descriptive information on any feature in the Comments column.

4. Data Conversion

- 4.1. Contractor will be responsible for converting all SIS data needed in order to shut down the District's legacy SIS application. District staff will assist as needed with identifying and describing the legacy SIS data.

5. Testing & Validation

5.1. Contractor will be responsible, with input from the District team, for creating a test plan and coordinating the testing effort. The test plan should minimally include the following:

- Testing approach, scope, goals and objectives for the following:
 - Unit testing of modifications
 - Usability testing
 - Quality assurance testing of data conversion and synchronization
 - User acceptance and system testing (end-to-end testing plan that incorporates all business functions currently performed in the District's legacy SIS as well as new functionality, including interfaces, queries and reports)
 - Performance testing
 - Parallel testing of key processes
 - Peripherals should be tested and configured to print or interface with new SIS - printers, barcode readers, etc.

- Test schedule with dates and resource requirements

5.2. Contractor will be responsible for identifying and preparing test environments, including a plan for providing a back-up of the test environment that can be reloaded for retesting as necessary.

5.3. District goals to be measured during testing include the following:

- Zero defects on all test items
- Positive usability testing results
- Performance response time is acceptable
- Complete and accurate configuration

6. Project Management

6.1. Staffing

- Project Manager – The Contractor shall provide an active certified project manager. This project manager will work with the District throughout and until full and final project acceptance. This project manager must be readily available to the District both in person and via phone, e-mail and chat/IM to address issues, resolve problems, attend meetings and ensure a smooth work flow and accurate and complete success of the project.

- The Contractor must provide sufficient staffing to successfully complete this project under the timelines and requirements of this proposal.

- The District will dedicate experienced functional and technical resources to the project. The District resources will work side-by-side with the corresponding Contractor resources.

- The District reserves the right to accept or reject any proposed resource for the project and to require the Contractor to supply an immediate replacement to the complete satisfaction of the District, if the District determines a person assigned to the project requires replacement.

6.2. Status

- Team progress meetings will be held on an agreed upon schedule but at least biweekly. These meetings will be attended by the Contractor project manager and the District project manager as well as the functional, technical and support personnel as dictated by the agenda topics.
- Executive sponsor meetings will be held on an agreed upon schedule but at least monthly. The purpose of these meetings will be to brief the District executives on the project progress and to discuss, identify and manage any project issues or risks.
- Contractor project manager will provide the District project manager and project sponsors with a weekly status report.

6.3. Schedule

- Working with the District team, Contractor will develop and maintain a project schedule and work plan, provide regular monitoring, identify potential variances and risks and recommend actions necessary to meet scheduled milestones and mitigate potential risks.

6.4. Documentation

- Contractor and District project managers will maintain all necessary project documentation and revisions. All project team members and stakeholders will have access to the documents that will be stored in identified Google Drive folders.
- Contractor shall use the District's documentation standards and naming conventions.

7. Business Process

- 7.1. Contractor will help District with the configuration and process flow in the new SIS based on District provided operating procedures and business practices.

8. Change Management and Training

- 8.1. Contractor to work with District team to develop a communication plan including communication to project team, management and end-users to keep them apprised of progress, timelines, issues and ways in which staff will be affected by the implementation.

- 8.2. Contractor's proposal must include a training plan which will provide training for approximately 1,200 users addressing the needs of school, administrative, technical and operational personnel. Contractor will work with District to fine-tune the training plan. The plan should minimally include:

- 8.2.1. Tasks to support the following training strategies from which the District can choose, which include, but are not limited to, the following training strategies:

- Web-based training – directed

- Web-based training – self-paced
- Train-the-trainer
- Face-to-face / hands-on
- e-Learning tutorials

8.3. Comprehensive training for District technical staff responsible for system administration, software installation and upgrade, database maintenance, ad hoc report generation, trouble-shooting, system configuration, and customization. Technical training materials must include system technical architecture, database schema document and data dictionary, and how-to and best practices documentation for system customization.

8.4. Detailed plans, including number of Contractor trainers, number of Contractor on-site training days, outline of proposed classes and materials, and number of per student training hours to address the training needs of:

- Classroom Teachers
- Non-Classroom Teachers
- School Site Administration
- School Site Support Staff
- Central Office Staff
- IT Technical Staff
- Help Desk Staff
- District Trainers

8.5. Training schedule that provides for just in time training for all users.

8.6. Description of support materials, such as handbooks and job aids, including integration with District policies and procedures.

9. Go-Live

9.1. Contractor will work with the District team to develop a Go-Live Plan. The plan should minimally include:

- 9.1.1. Work to be performed in Go-Live —dry runs and how results will be assessed and implemented in later Go-Live dry runs and production.
- 9.1.2. Creation of an Organizational Readiness Checklist in preparation for go-live. Will serve as determination for "Go/No-Go" decision. Checklist to include items such as: District communications complete; end-user training complete and users fully trained to do their work in new SIS on day one; all user acceptance testing passed. Must also indicate any items that both Contractor and the District team mutually agree to postpone until after Go-Live but before the project is complete.
- 9.1.3. Creation of a Go-Live cutover document and checklist that outlines schedule, tasks, and responsible parties for all steps involved in the Go-Live cutover process. The document should be refined based on lessons learned during dry runs practiced in advance of actual Go-Live date.

10. Post Implementation Support

10.1. Contractor to work with District team to develop a Post Implementation Support Plan. The plan should minimally include:

- Methods for tracking system performance and data integrity and accuracy to assure system is performing as required.
- A defined support structure to triage and efficiently deal with any issues within the first few weeks and months of schools going live on the new SIS.
- Defined functional and technical support responsibilities of Contractor for an agreed upon timeframe.
- Long-term plan (*****include annual pricing in pricing submittal*****) for District support of new SIS.

END OF SCOPE OF WORK

APPROACH ASSUMPTIONS

Contractor will propose recommended FTEs and roles of District technical and functional resources needed for successful completion of the project. District will make resources available as needed.

An Executive Steering Committee will be formed to provide oversight, vision and issue resolution for this project

TIMELINE

Date	Activity
May 2013	Collect RFP Requirements
June 2013	Draft and Issue RFP
July 2013-August 2013	Evaluate RFP Responses and Make a Selection
September 2013-June 2014	Data Conversion
September 2013-June 2014	Data Validation
September 2013-June 2014	Identify Interfaces & Prepare Replacements
September 2013-June 2014	Review and Update of Operating Procedures
January 2014-June 2014	Establish and Operate Test Schools
May 2014-August 2014	Training
May 2014-August 2014	Implementation
August 2014	Go Live

PROJECT ACCEPTANCE CRITERIA

The project will be considered complete when the following criteria have been met:

- The Organizational Readiness checklist has been approved and any items postponed until after Go-Live have been completed and approved
- All project deliverables have been completed to the satisfaction of the District
- All user acceptance testing is complete with satisfactory or better results
- The move to the new system is complete. All schools and offices performing SIS work previously done in the District's legacy SIS application are fully performing that work in the new SIS
- The District's legacy SIS is shut down

SOURCE CODE PROTECTION

Proposer shall be responsible for establishing, executing and maintaining a **third party escrow agreement** for its source code for the duration of the contract at **no cost** to the District. Vendor agrees to register the District as a third party beneficiary for the source code with the escrow agent. Application source code shall be available to the District in the event the selected Proposer is no longer able to support the application.

BID QUOTATION FORM

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.

Initial Set-up	\$	
Data Conversion	\$	
Testing & Validation	\$	
Project Management	\$	
Change Management	\$	
Training	\$	
Post Implementation	\$	
Ongoing Support (Annual)	\$	
Total	\$	

_____ Dollars and _____ Cents (\$ _____)

Receipt and acceptance of the following addenda is hereby acknowledged: No. _____, _____, _____.

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

Date

Type or Print Signer's Name

Title

Address

Telephone

GROSSMONT UNION HIGH SCHOOL DISTRICT
Agreement for Provision of Services
No. _____

This agreement for provision of services ("Agreement") is made as of ____, 20__, by and between the _____ Grossmont Union High School District ("District"), a public school district organized and existing pursuant to California law, and _____ ("Service Provider"), a California _____. District and Service Provider may be referred to herein individually as "Party" and collectively as "Parties."

In exchange for good and valuable consideration, as set forth in this Agreement, District and Service Provider agree as follows:

Section 1. Scope of Work. Service Provider shall perform the services specified in "**SCOPE OF WORK.**" "**Attachment A, SIS RFP Requirements**" is incorporated herein by this reference. District may at any time request a change in the scope of the Services that are the subject of this Agreement, which request Service Provider shall not unreasonably deny. In the event of any conflict between this Agreement and Attachment A, this Agreement shall control.

Section 2. 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 according to the following terms and conditions:

(For additional explanation of reimbursement terms, attach Exhibit B, which then will be incorporated herein full by this reference.)

Section 3. Term of Agreement. The term of this Agreement shall be the period from execution hereof until _____.

Section 4. Parts and Materials. Service Provider shall provide all parts and/or materials incidental to provision of the Services that will be incorporated into equipment or a facility owned, possessed or retained by District ("Parts") at Service Provider's cost or the fair market value of the Parts, whichever is lower. Service Provider shall provide all Parts covered by warranty or guaranty free of charge to District. All Parts incorporated into equipment or facilities owned, possessed or retained by District shall be new and of the same or reasonably better quality as the equipment or facility into which the Parts are being incorporated. All Parts shall be guaranteed by Service Provider for a minimum period of one year. Service Provider shall replace or repair any such Parts that fail or require replacement within the one-year guaranty period at no charge to District for labor and replacement Parts.

Section 5. Monthly Summary Statements. By the fifteenth (15th) calendar day of each month, Service Provider shall submit statements to District detailing the date, beginning

and ending times, classification of time (i.e., standard, emergency, or after-hours), location, and nature of the Services, and the specific equipment or facility that was the subject of the Services, performed by Service Provider in the preceding month. If such Services included the provision by Service Provider of Parts, the corresponding statement shall also include a description of the Parts and the specific equipment or facility, including serial number, if any, into which such Parts were incorporated. Corresponding work orders signed by the appropriate District representative shall be submitted with the monthly summary statement. District shall verify all time and charges specified in a statement and shall pay any amounts owing to Service Provider within thirty (30) days of receipt of the statement.

Section 6. Requests for Service. Service Provider shall designate an account manager (“Account Manager”) to field all requests for Service by District representatives. The Account Manager shall be available by telephone between the hours of seven-thirty (7:30) a.m. and five (5:00) p.m., Monday through Friday, or shall ensure in his or her absence that another individual is available and fully authorized to respond to District requests for Service. In addition, Service Provider shall maintain an “after hours” telephone number at which District may contact the Account Manager or other authorized individual to request Service after five (5:00) p.m. and on weekends.

Section 7. Service Provider’s Expertise. Service Provider warrants that the personnel that it provides to perform the Services have the technical expertise and experience required to perform the Services in an efficient, timely manner, and in a manner consistent with the standards prevailing in the Southern California area for those acting in Service Providers’ profession. Service Provider further warrants that it has sufficient resources to adequately and timely perform the Services as the need therefore arises.

Section 8. Independent Contractor. Service Provider is an independent Contractor to District, not an officer, employee or agent of District. Service Provider shall conduct its activities in a manner consistent with its status as an independent Contractor and shall not represent itself as an officer, employee, or agent of District. Nor shall Service Provider cause or allow any third party (whether person or entity) to continue in any apparent belief that Service Provider is an officer, employee, or agent of District.

Section 9. Indemnification. Service Provider shall indemnify and defend District, and shall hold District harmless, against and from any and all claims, demands, actions and other proceedings, damages, losses, costs, expenses (including, without limitation, attorneys fees and expenses), and other liabilities of any nature attributable to the injury or death of any person(s) or the damage to any property arising out of or in any way connected with the performance of this Agreement by Service Provider or its officers, agents, employees or subcontractors. Service Provider shall reimburse District for all damages, expenses and losses incurred by District as a consequence of any claim, demand, or cause of action that may be brought against District resulting from, arising out of, or in any way connected with the performance of this Agreement or of the Services by Service Provider or its officers, agents, employees or subcontractors, including disputes between Service Provider and any of its subcontractors. The Service Provider shall not be responsible, pursuant to this Section, to the extent of any contributing negligence or willful misconduct of the District or its officers, employees or subcontractors.

Section 10. Insurance. Service Provider shall obtain, and shall maintain for the term of this Agreement, the policies of insurance specified in this Section (each a “Policy”), which shall be issued by an insurance company (“Insurer”) having a Secure Best’s Rating of at least “A minus” and a Secure Financial Performance Rating of at least “7,” as those are specified in the most recent version of Best’s Key Rating Guide. Each Policy shall name District as an

additional insured, and endorsements to a Policy naming District as a certificate holder shall not be acceptable and shall not satisfy the requirements of this Section. Prior to commencing performance of this Agreement, Service Provider shall provide to District one or more certificates issued by Insurer evidencing that Service Provider has obtained each Policy required pursuant to this Section ("Certificate of Insurance"). Each Policy and Certificate of Insurance shall require that Insurer give notice to District not less than thirty (30) days prior to any cancellation, termination, expiration or reduction in coverage of the Policy, and language to the effect that the Insurer shall "endeavor" to provide such notice shall not be acceptable.

(a) *Liability Insurance.* A policy of commercial general liability insurance, written on an "occurrence" basis, ("Liability Policy") covering claims for bodily injury, including death, property damage, and consequential damages that may arise out of or result from Service Provider's performance of this Agreement or from actions taken in connection with the Services, whether such actions are taken by Service Provider, any of its subcontractors, or any person directly or indirectly employed by any of them. The Liability Policy shall provide coverage for the contractual liability assumed by Service Provider pursuant to this Agreement and any loss-of-use suffered by District. The Liability Policy shall provide coverage in amounts not less than five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) aggregate.

(b) *Automotive Insurance.* A policy or policies of liability insurance, written on an "occurrence" basis, for all automotive vehicles owned, leased, rented or used by Service Provider in the course of performing this Agreement or the Services, or any travel related thereto, providing coverage for personal injury, including death, and property damage in amounts not less than five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) aggregate.

(c) *Workers' Compensation.* A policy or policies of workers' compensation insurance in compliance with Section 3700 of the California Labor Code and all other applicable requirements.

Section 11. Prohibition against Assignment of Agreement. Service Provider may not assign this Agreement, nor any of its obligations hereunder, in part or in whole, without the express written consent of District, which District may grant or deny in its sole discretion.

Section 12. Prohibition against Subcontracting. Provision of Services by Service Provider is personal to District; therefore, Service Provider warrants that it will perform the Services required pursuant to this Agreement utilizing only its own *bona fide* employees. Service Provider warrants that it has entered into this Agreement on and for its own behalf, and that it has not solicited or secured this Agreement with District with the intention that other than Service Provider's own *bona fide* employees would perform the Services. Service Provider shall not subcontract any portion of the performance required pursuant to this Agreement to any person, persons, or entity without the express written consent of District, which District may grant or deny in its sole discretion.

Section 13. Background Checks. The District Governing Board determined that the potential exists for the person or persons performing the Services on behalf of Service Provider to have more than limited contact with one or more District students during the course of performing the Services. Therefore, pursuant to Education Code Section 45125.1, Subsection (d), Service Provider shall comply with all requirements of Section 45125.1 related to verification of criminal history, including fingerprint checks, of that person or those persons.

Section 14. Records. Service Provider shall, at District's request, make available to District, or provide copies to District of, all records, invoices or other documents relating to the type of services performed, the time spent performing such Services, and other information pertinent to provision of the Services by Service Provider. Notwithstanding anything in this Agreement to the contrary, the obligation specified in this Section shall be specifically enforceable in an appropriate court in the County of San Diego.

Section 15. Notices. All notices, demands, and communications from one Party to the other pursuant to, or in connection with, this Agreement, shall be in writing, duly addressed as indicated below, and sent by: (i) personal delivery; (ii) facsimile transmission; (iii) first class U.S. mail, postage prepaid; or (iv) pre-paid FedEx or other reliable private express delivery service. Any such notice, demand, or communication shall be deemed received: (i) upon delivery if personally delivered or sent by facsimile; or (ii) upon receipt if given in any other approved manner specified above. Either Party to this Agreement may change its name, address, facsimile number, or person to whom attention should be directed, for purposes of this Agreement, by giving notice as specified in this Section. Notices, demands, and communications shall be sent:

To District: _____ Grossmont Union High School District
Attention: _____

Fax: (____) ____ - _____

To Service Provider: _____
Attention: _____

Fax: (____) _____

Section 16. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of District and Service Provider. Other than District and Service Provider, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

Section 17. Entire Agreement. This Request for Proposals, Addenda, and this agreement comprise the entire agreement. This agreement constitutes the entire understanding of the parties hereto. Consultant shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Consultant specifically acknowledges that in entering into and executing this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no others.

Section 18. Amendments Must Be In Writing. This Agreement may not be modified except by a writing signed by District and Service Provider.

Section 19. Acknowledgment of Independent Investigation. Service Provider acknowledges that it has conducted an independent investigation of the facts related to this Agreement. Service Provider warrants that it has visited District's facilities and has independently determined the makes, models, types, and/or numbers of the equipment and/or facilities that will be the subject of the Services.

Section 20. Interpretation Guides. This Agreement shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof.

Section 21. No Continuing Waiver. Should a Party waive or fail to enforce an obligation of the other Party arising from or in connection with this Agreement, such waiver or failure shall not be construed to be a waiver of any or all right to subsequently require performance of that or any other obligation or to otherwise enforce the provisions of this Agreement.

Section 22. Compliance with Law. Service Provider shall at all times during the term of this Agreement perform the Services in compliance with all Federal, State and Local laws, regulations and ordinances.

Section 23. Venue for Resolving Disputes. Any arbitration or litigation arising out of this Agreement shall be conducted only in the County of San Diego, California.

Section 24. Disputes To Be Arbitrated. District and Service Provider desire to resolve as quickly as possible any disputes regarding the meaning of this Agreement or any portion thereof, or the rights or obligations of District or Service Provider pursuant hereto. Therefore, any such disputes shall be resolved by binding arbitration conducted by a mutually agreed-upon retired judge of the San Diego County Superior Court. If District and Service Provider are unable to agree on the arbitrator within thirty (30) days of a request for arbitration, they shall request that the presiding judge of the Superior Court designate an arbitrator. District and Service Provider shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs with respect to any such arbitration.

Section 25. Recovery Of Litigation Expenses. Except as provided in Section 24, if it becomes necessary for either Party to bring a court action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of litigation in addition to any other relief to which it may be entitled.

Section 26. Due Authority of Signatories. Each individual signing this Agreement warrants and represents that he or she has been authorized by appropriate action of the Party he or she represents to enter into this Agreement on behalf of that Party.

In Witness Whereof, this Agreement has been duly executed by the Parties, as indicated by the signatures below:

**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
Authorized Officer or Agent

CONSULTANT CERTIFICATION FORM

CERTIFICATION PURSUANT TO EDUCATION CODE SECTION 45125.1

The District has determined under Education Code Section 45125.1, subdivision (c), that in performing services to this contract, Consultant's employees may have contact with pupils. As required under Education Code Section 45125.1, subdivision (a), Consultant shall require their employees, including the employees of any subconsultant, who will provide services pursuant to this contract to submit their fingerprints in a manner authorized by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

Consultant shall not permit any employee to perform services that may come in contact with pupils under this contract until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Section 45122.1.

Consultant shall certify in writing to the District that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code Section 45122.1.

Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with all of the requirements contained in Education Code Section 45125.1, including, but not limited to, the requirements prohibiting Consultant for using employees who may have contact with pupils who have been convicted or have charges pending for a felony in Education Code Section 45122.1.

It is understood that by signing this document Consultant agrees that they are familiar with Education Code Section 45122.1. The following individuals are employees of Consultant who may come in contact with pupils in the performance of services in this contract.

Name	Social Security No.
------	---------------------

I certify that none of the individuals identified above has been convicted of a felony as defined in Education Code Section 45122.1.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

SECTION IV

MISCELLANEOUS

SAMPLE POLICIES,

DOCUMENTS, &

FORMS

STANDARDS OF PURCHASING PRACTICE

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

Sales Representative expects 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. Characteristics of Ethics

A. Consideration for Others

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 for their convenience?
2. 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?

“An important element in ethical decision-making is an impartial consideration of the interests of others. The moral point of view goes beyond self-interest to a standpoint that takes everyone’s interests into account.” (Santa Clara University)

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 "let's play it by ear" approach.
4. Some people attempt to intimidate you by being rude, brusque and generally offensive.

D. Polite

3. Most people most of the time, appreciate being treated with courtesy and respect.
4. They will reciprocate in kind.
5. 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?

HAZARDOUS MATERIALS CODES

EDUCATION CODE SECTION 32060-32066

Arts & Crafts Guidelines

California law (Education Code §32064) prohibits the purchase of art or craft materials containing toxic substances for use by students in grades K-6, and requires that art products purchased for use by students in grades 7-12 are properly labeled to inform users of long-term (chronic) health risks and instructions for safe use. These purchasing requirements apply to schools, school districts, and governing authorities of private schools.

This law also requires the Office of Environmental Health Hazard Assessment (OEHHA) to develop a list of art and craft materials that cannot be purchased for use in grades K-6 (Education Code §32066). This list is a resource to assist schools in complying with the purchasing requirements.

Although not required by law, avoiding art materials that appear on the OEHHA list when purchasing for use by students in grades 7-12 is a good precautionary measure. Teachers and students should carefully read and follow instructions for safe use. Beyond Legal Requirements Regarding Purchasing by Schools Listed products should also be avoided when requesting donations or instructing families on the purchase of art and craft supplies. Donated supplies that are not properly labeled for health hazards (see next section) should be discarded, and supplies that bear health hazard labels should not be directed to K-6th grade classrooms. Schools are encouraged to inventory existing art and craft supplies and remove materials bearing health hazard labels from K-6th grade classrooms. There is another California law (commonly known as Proposition 65) that requires warnings regarding exposures to chemicals known to the state to cause cancer, birth defects, or other reproductive harm. A typical warning says: "This product contains a chemical known to the state of California to cause cancer (or birth defects or other reproductive harm)."

Federal Law and Product Labeling Federal law imposes certain toxicological review and labeling requirements on art and craft materials. The Federal Hazardous Substances Act (Sec. 23 [15 U.S.C. §1277]) requires all art and craft product labels to include information about acute and chronic health hazards and safe handling instructions as applicable, and a statement of conformity to ASTM D-4236, the mandatory art product health labeling guidelines that specify these requirements. This law also prohibits children's products, including children's art materials, from containing an accessible hazardous substance. Federal law does not define 'non-toxic' and does not prohibit use of this term on art products that do not require cautionary labeling. Some products labeled 'non-toxic' can cause harmful effects when used in an unintended manner.

For more information and links:

<https://oehha.ca.gov/risk-assessment/art-hazards>

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

Every California employer must establish, implement and maintain a written **Hazard Communication Program** and a copy must be maintained at each workplace or at a central worksite if the employer has non-fixed worksites. The requirements for establishing, implementing and maintaining an effective written hazard communication program are contained in Title 8 of the California Code of Regulations, Section 5194 (T8 CCR 5194) and consist of the following elements:

- Workplace hazardous material inventory
- Material Safety Data Sheets (MSDS)
- Labels and other forms of warning
- Employee information and training
- Hazardous non-routine tasks
- Pipe labeling
- Contractors

For purchasing departments with oversight over a central warehouse and/or a duplication department, it is important to be aware of these requirements. For information on the regulations see the following links:

<https://www.dir.ca.gov/title8/5194.html>

https://www.dir.ca.gov/dosh/dosh_publications/hazcom.pdf

DISPOSAL OF TEXTBOOKS AND INSTRUCTIONAL MATERIALS

Education Code section 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.

Education Code section 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.

Education Code section 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.

Disposal Process:

1. Collect all instructional materials/books and box and palletize by subject area.
2. Enter a Work Request to have the materials picked up.
3. The Purchasing Department will handle the auction of the instructional materials
4. Materials that are not usable will be shredded.

**NOTICE OF PUBLIC AUCTION AND PUBLIC HEARING
INSTRUCTIONAL MATERIALS**

NOTICE IS HEREBY GIVEN that the _____ School District of _____ 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: _____ or upon request by calling (XXX) XXX-XXXX.

A public hearing will be conducted at _____ p.m. during the regularly scheduled Governing Board meeting to be held on _____, at _____.

Clerk of the Governing Board
_____ School District

Publication: Daily Transcript
Advertising dates: _____

Data Privacy Requirements for Contracts with Technology Providers
(California Education Code § 49073.1)

Technology services agreements entered into, amended, or renewed by a school district on or after January 1, 2015 must follow specific requirements. These requirements apply to contracts for services that utilize electronic technology, including cloud-based services, for the digital storage, management and retrieval of pupil records, as well as educational software that authorizes a third-party provider to access, store and use pupil records. Therefore, it is recommended that any such agreements, including terms and conditions for websites and applications, be reviewed for the following terms:

- Establish that the school district owns and controls student records.
- Describe how students can control content created for education-related purposes, along with a way to transfer content to a personal account later.
- Prohibit third parties from using student information for purposes outside of those named in the contract.
- Describe how parents, legal guardians, or students can review and correct personally identifiable information contained in their records.
- Outline actions that third parties will take to ensure student data is secure and confidential.
- Describe procedures for notifying affected parents, legal guardians, or eligible students in the event of unauthorized disclosure of student records.
- Certify that student records will not be retained or available to the third party once the contract is over and explain how that will be enforced.
- Describe how school districts and third parties will comply with FERPA.
- Prohibit third parties from using personally identifiable information from student records to target advertising to students.

School districts should be cautioned that out-of-state technology providers may not be familiar with these requirements. The penalty for noncompliance with the requirements of Education Code section 49073.1 is that contracts will be voided if, following the provision of notice of deficiency, they do not comply within a reasonable amount of time.

A sample checklist is included to assist school districts in evaluating compliance. In the event that a school district determines an agreement is not compliant with California Education Code section 49073.1, a sample technology contract addendum is also included, which school districts may provide to technology providers to incorporate compliant procedures into existing agreements.

It is recommended that staff be trained to evaluate terms and conditions for data privacy compliance prior to downloading website content or applications for students.

Sample Compliance Checklist for Technology Services Agreements
(California Education Code § 49073.1)

Technology services agreements entered into, amended, or renewed by a California school district on or after January 1, 2015 must follow specific requirements. These requirements apply to contracts for services that utilize electronic technology, including cloud-based services, for the digital storage, management and retrieval of pupil records, as well as educational software that authorizes a third-party provider to access, store and use pupil records. All of the following requirements must be included in such contracts:

- A statement that pupil records continue to be the property of and under the control of the school district;
- A description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account;
- A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract;
- A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information;
- A description of the actions the third party will take—including the designation and training of responsible individuals—to ensure the security and confidentiality of pupil records;
- A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records;
- A certification that a pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced (NOTE: This requirement does not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account.);
- A description of how the district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act; and
- A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

References: AB 1584; Cal. Educ. Code § 49073.1; 20 U.S.C. § 1232g

Sample Addendum to Technology Services Agreement
(California Education Code § 49073.1)

This Addendum No. ___ is entered into between _____ [insert school district name] (“District”) and _____ [insert service provider name] (“Service Provider”) on _____ (“Effective Date”).

WHEREAS, the District and the Service Provider entered into an agreement for technology services titled _____ [insert original contract title] (“Technology Services Agreement”) on _____ and any addenda on _____;

WHEREAS, the District is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (“AB 1584”), the California Education Code, the Children’s Online Privacy and Protection Act (“COPPA”), and the Family Educational Rights and Privacy Act (“FERPA”);

WHEREAS, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party service provider must include certain terms; and

WHEREAS, the District and the Service Provider desire to have the Technology Services Agreement and the services provided comply with AB 1584.

NOW, THEREFORE, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement and any addenda are incorporated herein by reference.
2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.
3. Pupil records¹ obtained by Service Provider from District continue to be the property of and under the control of the District.
4. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows: [INSERT PROCEDURE]²

¹ Pupil records include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees. Pupil records does not include de-identified information (information that cannot be used to identify an individual pupil) used by the third party: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

² Procedure provided will likely depend on the capability of the technology services vendor. The information will likely have to be provided by vendor to demonstrate product compliance.

5. The options by which a pupil may transfer pupil-generated content to a personal account include: [INSERT PROCEDURE]
6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol: [INSERT PROCEDURE]
7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: [INSERT PROCEDURE]
8. In the event of an unauthorized disclosure of a pupil's records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: [INSERT PROCEDURE]
9. Service Provider shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Technology Services Agreement.
10. Service Provider certifies that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure: [INSERT PROCEDURE]
11. District agrees to work with Service Provider to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure: [INSERT PROCEDURE]

IN WITNESS WHEREOF, parties execute this Agreement on the dates set forth below.

Date: _____

[Insert District Name]

Date: _____

[Insert Service Provider Name]

ANY SCHOOL DISTRICT

REQUEST FOR QUOTATION

Email Response:

Sharon Jones
 Director of Purchasing
 Ph.: 555-111-2222
 Fax: 555-222-3333
sharon.jones@email.net

RESPONSE DUE BY:

2:00 p.m. on _____, 20__

Company Name: _____ Contact: _____

Address: _____ Phone #: _____

Email Address: _____ Fax: _____

Purchase Orders must be accepted with payment terms of Net 30. See <http://anyschooldistrict.net/purchasing> for terms and conditions.

Acceptance: Submission of a response to this RFQ constitutes acceptance of the terms and conditions of this Request for Quotation and purchase orders issued under this RFQ. Quotes may not be withdrawn after the deadline for a period of 30 days. Quantities may be more or less than estimated in quote form. Vendor is to submit best and final price.

Specifications: *(type specifications for item/service requested here)*

Est. Qty.	Unit	Description	Price Per Unit
		<i>Be specific on description. Include size, color, fabric type, dimensions, gauge of steel, etc.</i>	
Shipping			
Apply tax rate to point of delivery) Tax			
Total			

Acknowledgement of terms and conditions:

By _____

Name: _____

UNION SCHOOL DISTRICT

REQUEST FOR QUOTATION (RFQ)

Suppliers must sign and date this page in the space provided below

REQUESTER INFORMATION		Date of the RFQ	RFQ Closing Date
Department:		Submission of a response to this RFQ constitutes acceptance of the terms and conditions of this Request for Quotation. Quotes may not be withdrawn after the deadline.	RFQ NO.
Contact Name:			
Telephone #:			
Fax #:			
e-mail:			

Delivery Address & Instructions

Item No.	Quantity	Unit of Measurement	Goods & Services Description	Unit Price	Total Price

Payment Terms:	Total Amount before Taxes
Net 30 upon receipt of invoice.	Shipping
	Sales Tax
	Grand Total including

Supplier Name	Supplier Address, Telephone No.	Expected Delivery Time	Quotation #
			Quotation Date

Comments:	Email Address	Supplier Contact Name
		Signature

DISTRICT

Administrative Regulation

AR 3311

Business and Noninstructional Operations

Public Works Bids

The district has adopted the California Uniform Public Construction Cost Account Act procedures under Public Contract Code 22000 et. seq.

Informal Bids:

Public projects, as defined by the Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code. [OPTIONAL: The District has elected to utilize the alternative bid limits for maintenance work pursuant to Public Contract Code 22003].

To include maintenance.

Contractors List:

A list of contractors may be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

Delegation for Informal Bids:

The governing body of the public agency may delegate the authority to award informal contracts to the public works director, general manager, purchasing agent, or other appropriate person.

Bids Over Informal Limit:

If all bids received are in excess the current formal limit (currently \$200,000), the governing body of the public agency may, by adoption of a resolution by a four-fifths vote, award the contract, at two hundred twelve thousand, five hundred dollars (\$212,500) or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.

Formal Bids:

The district shall seek competitive bids through advertisement for contracts involving an expenditure of greater than the informal bid limit for a public project (Public Contract Code 22037), informally bid contracts involving an expenditure of less than the informal bid limit, and seek quotes, when feasible, for projects involving an expenditure of the force account threshold or less. (*Amended by Stats. 2015, Ch. 269, Sec. 29. Effective January 1, 2016.*)

"Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition, and repair work involving a district owned, leased or operated facility. (Public Contract Code 22002)

Competitive bids shall be sought through advertisement for contracts exceeding \$50,000 as adjusted annually by the State Superintendent of Public Instruction, for the following: (Public Contract Code 20111; Government Code 53060). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the district
2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters
3. Repairs, including maintenance that is not a public project

To exclude maintenance.

"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility as well as repairs, cleaning and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (Public Contract Code 20115).

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

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. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 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. (Education Code 39802)

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the district, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks for materials, supplies, and non-construction services and not less than 14 calendar days prior to bid opening for public works projects.. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (Public Contract Code 20112 and 22037)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall not occur

within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

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

1. Recycled Content and Recycled Products (Public Contract Code 22150 et seq.)
 - a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.
 - b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.
2. All informal and formal bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)
 - a. Cash
 - b. A cashier's check made payable to the district
 - c. A certified check made payable to the district
 - d. A bidder's bond executed by an admitted surety insurer and made payable to the district

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. (Public Contract Code 20111)

1. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
2. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)
3. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, depending on the availability of funds, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a, below, will be used: (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
 - c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.
 - d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.
4. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

5. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation.

(cf. 1340 - Access to District Records)

Bids Not Required

Upon a determination that it is in the best interest of the district, the Board may authorize the purchase, lease or contract for data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

(cf. 3310 - Purchasing Procedures)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050).

(PCC 22035)

In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two.

By a four-fifths vote of the governing board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By a four-fifths vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed). Code is in conflict with boards that meet on a monthly basis.

(PCC 22050)

(cf. 9323.2 - Actions by the Board)

Bids shall also not be required for day labor under circumstances specified in law. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects up to the Force Account Limit may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (Public Contract Code 22032)

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above

Sole Sourcing Brand Names

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to any one product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality or utility and follow the description with the words "or equal." (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name when one or more of the following conditions apply: (Public Contract Code 3400)

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. (A) 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. (B) 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.

If the district specifies a brand name for a designated material, product, thing, or service by the specification shall be followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the District shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall 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.

Prequalification Procedure

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 Superintendent or designee shall supply a form which requires a complete statement of the bidder's financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at least five days before the date

fixed for public opening of sealed bids. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5)The Superintendent or designee 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. Bidders must be deemed prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

For any contract awarded after January 1, 2014, using funds from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond if the project has projected expenditures of one million dollars or more, the District must prequalify all bidders. (Public Contract Code 20111.6) The District shall comply with all requirements of the PCC 20111.6 until its expiration on January 1, 2019.

Appeal Procedures

Contractors will be allowed to appeal a negative pre-qualification determination in accordance with California Public Contract Code §20101.d. There is no appeal from a refusal for an incomplete or late application. Without a timely appeal, the Contractor waives any and all rights to challenge the decision of the District, whether by administrative process, judicial process or any other legal process or proceeding.

In conjunction with this Pre-Qualification Policy, the District hereby establishes a Bidder Pre-Qualification Appeals Panel ("Appeals Panel"), consisting of the following three members, or their designee(s):

Two representatives of the district.
A member of an outside agency.

The sole issue before the Appeals Panel shall be the scoring of a Contractor. The decision of the Appeals Panel shall be the District's final administrative decision.

The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process.
Process:

1. Prior to disqualifying a contractor, the District shall serve written notice on the contractor:
 - a. Setting forth the reasons for the disqualification.
 - b. Indicating that the contractor will be afforded an opportunity to appeal the disqualification as outlined below. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the contractor, or the contractor's agent for service of process, or any of its principal officers, partners, owners or affiliated.

1. The contractor shall submit his appeal in writing with the (*INSERT TITLE*) no later than 4:00 p.m. of the FIFTH business day following the day on which the notice of rejection was mailed to the contractor.
2. The District shall act upon properly filed requests within ten calendar days from the date of receipt of such request. If, after review, the District again rejects the contractor's application, the contractor may request an administrative hearing with the panel.
3. At the hearing, the contractor may present oral testimony concerning the contractor's capability and responsibility. The District shall notify the contractor of his decision within five business days following the hearing. The decision of the panel is final.
4. A contractor, who is denied prequalification, shall be disqualified in the same type of work or category of value for a period of one year thereafter.

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after opening of bids. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.

Any bidder submitting a Bid Proposal may file a protest of the District's intent to award the Contract provided that each and all of the following conditions are met:

1. The protest must be submitted in writing to the District (e-mail is not acceptable), before 4 p.m. of the FIFTH business day following bid opening.
2. The initial protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence
3. The protest must refer to the specific portions of all documents which form the bases for the protest.
4. The protest must include the name, address and telephone number of the person representing the protesting party.
5. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Deputy Superintendent, Business Services, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Deputy Superintendent, Business Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Governing Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid award as reflected in the written statement of the Deputy Superintendent, Business Services or his/her designee. Action by the District's Governing Board relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Governing Board. The rendition of a written statement by the Deputy Superintendent, Business Services (or his/her designee) and action by the District's Governing Board to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the

Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals.

6. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

Federal Procurement

Procurement is the multistep process for acquiring the best possible goods and services at the lowest possible price. The District will purchase items for use in the School Nutrition Programs (SNP) and in Federally funded programs in compliance with 2 CFR Part 200, State and District regulations, using the procedures outlined as follows and in the attached chart of procedures.

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The Board believes that competition helps ensure that goods, equipment, and services will be obtained at the lowest possible cost. The procurement procedures used by the District will not unduly restrict or eliminate competition.

When making procurement decisions, the District will follow the subsequent four fundamentals principals:

1. Follow the Buy American provision.
2. Follow the more restrictive bid threshold, whether it be the federal, state or local threshold.
3. Ensure that full and open competition exists to the maximum extent possible.
4. Award contracts to the most responsible and responsive bidders.

Prior to beginning the procurement procedures outlined in this document, the District will:

1. Complete a needs assessment and an accurate forecast – to the best ability of the District.
2. Determine that the item(s) are necessary and does not duplicate items and/or bid(s) the District already has in place.
3. With equipment, the District will determine the most economical approach – lease vs. buy – prior to preparing a solicitation.
4. Determine the bid threshold in order to determine what method of procurement will be used for the goods or services
5. Develop specifications for products needed including details such as product descriptions and requirements for goods or services. Descriptions must not unduly restrict competition. The description must describe the minimum essential characteristics and standards the product must conform to.
6. Developing evaluation criteria if using a Request for Proposal (RFP) prior to releasing the bid document
7. All procurements will be handled by the Purchasing Department. No other Department is authorized to procure materials, goods, and services unless designated by the Assistant Superintendent, Business Services or designee.

Micro Purchase Procedures

Micro purchase process will be used to purchase goods and services that are needed on an emergency basis, for special or last-minute catering events or for items needed only occasionally.

Micro purchasing procedures are used under the following conditions:

- a. The aggregate value of the single transaction is less than the Micro Purchase threshold as detailed in [48 CFR parts 2](#).
- b. The District considers the price to be reasonable.
- c. The determination that the price is reasonable is documented and included in the procurement file (This file is located within the Purchasing Department). Prices found on the internet may be used to verify that the price the District is paying is reasonable.
- d. Micro purchases are equally distributed among qualified suppliers. A qualified supplier for items picked up by District personnel at the supplier location will be defined as a supplier who will accept a District purchase order and be within five miles of the District headquarters. For emergency equipment repair, repair work will be distributed amongst those suppliers who are familiar with the brand of equipment the District uses and is authorized to work on that brand by the manufacturer and can respond within 24 hours.

Small Purchase Procedures

Small purchase procedures will be used to purchase goods, equipment, office supplies, and services where the aggregate cost is less than formal limit threshold and greater than the micro-purchase threshold as detailed in [48 CFR parts 2](#).

When small purchase procedures are used, the following conditions must be met:

- The goods, equipment, or services to be purchased will be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications may be either verbal or written. It is not necessary to send price quotes in writing, but it is the preferred method. Both written and verbal methods must be documented.
- Specifications/food descriptions must be sent by fax or e-mail or communicated by telephone or in person to an adequate number of suppliers. A list of potential suppliers will be developed, maintained, and added to throughout the course of the school year. During the summer, the District will solicit potential suppliers to determine their interest level in being added to the small purchase procurement list. The District will network with other appropriate personnel to obtain supplier contact information, as well as to obtain feedback regarding service and product quality. The list developed will be used to contact interested suppliers throughout the school year. Suppliers will be added to this list upon request. The list will be maintained by the Purchasing Department.
- Responses from suppliers may be in either the written or verbal form. Verbal quotes must be documented. The District's purchase documentation form and /or supplier contract form contained herein will be used for this purpose.
- Price quotation responses will be retained by the District in the Purchasing Department with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The District will utilize its purchase documentation form and/or supplier contract form for this purpose.

Competitive Formal Procurement

EFC (1 of Competitive Formal procurement procedures – Information for Bid (IFB) or Request for Proposal (RFP) - will be used to purchase goods, equipment, and services where the aggregate cost is more than the formal limit threshold as detailed in [48 CFR parts 2](#).

When competitive formal procurement procedures are used, the following conditions, stipulations, and terms must be met:

- The bid must be free of actions that might inhibit competition and allow the supplier adequate time to complete the bid.
- The bid must be advertised and include the general nature of the goods or services to be procured; method of procurement that will be used; how the supplier can obtain more information; and the due date for the responses to the bid. The bid must be publicly advertised one week a part in a newspaper of general circulation per California PCC section 20112. The bid may also be advertised on the District website.
- Bids will be solicited from an adequate number of known suppliers in sufficient time prior to the date set for the opening of the bids. Bids will be mailed or emailed to those suppliers who have previously requested to do business with the District.
- The date that all addenda, changes, or answers to questions will be posted regarding the bid must be included in the original bid document as well as the website where the answers will be posted.
- The invitations for bid will clearly define the items or services needed in order for the bidders to be able to properly respond. This includes product specifications and general purchasing conditions.
- Suppliers wishing to bid on the contract may not assist the District in the development of the bid or the specifications for product/goods. This includes offering the services free of charge for the development of the specifications.
- The bid document must contain the following written requirement: “All rebates, discounts, and other applicable credits must be returned to the District”.
- Any and all bids may be rejected when there is sound documented reasons rejecting is in the best interest of the District.
- Bid award will be based on low bid after verifying that the supplier with the low bid is responsive and responsible, meets the product specifications, and after performing a cost analysis.
- When using a Request for Proposal (RFP) in compliance with federal and state guidelines, the evaluation criteria must be included in the bid package and price must be the highest weighted factor. In addition to price, the evaluation criteria may include categories such as: Flavor & Quality, Past Performance, Minimums, Delivery Days and Times. A description of the Scoring System must be included in the RFP which will explain the scoring criteria for each category.
- During the evaluation phase, the evaluation criteria, other than price, must first be evaluated prior to evaluating price. There should be a committee of at least 2 persons who did not write the bid, evaluate the technical criteria of the RFP. The RFP is to be awarded to the most responsive, responsible supplier who submitted the lowest price as determined by the evaluation criteria.

- Responses from suppliers must be in writing; signed by the authorized authority to submit the bid, be returned in a sealed envelope on or before the date and time specified and to the place specified in the bid documents.
- Bids not received on time will be returned to the bidder unopened.
- Bid proposals will be retained by the District with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.

The recommendation for bid award must be submitted to District’s Board for the award of the bid.

- When the District chooses, purchases may be made through a cooperative agreement or piggybacking with other school districts when all legal procurement procedures are followed as required.
- For cooperative purchasing, District must maintain on file for the current year plus three additional years, a copy of the bid; proof of advertising; and bid award documents from the awarding District’s Board.
- For piggybacking, District must obtain permission from the District awarding the bid and the supplier awarded the bid. A copy of the bid, including the piggyback clause, proof of advertising, and proof of award from the awarding District’s Board must be kept on file for the current year plus three additional years.

Non-Competitive Proposal (Sole Source):

These types of proposals will be used only when procurement is not feasible under the small purchase procedures, sealed bid (formal advertising), or competitive proposals. The decision to use noncompetitive proposal will be justified in writing, approved by CDE, and be available for audit and review.

Circumstances under which procurement may be conducted by noncompetitive proposal may be used only when one or more of the following circumstances apply ([CFR 200.320](#)):

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.

Regulation _____ SCHOOL DISTRICT

Approved: _____, 20__, _____, California

Revised:

Competitive bids shall be sought through advertisement for contracts exceeding \$50,000 as adjusted annually by the State Superintendent of Public Instruction, for the following: (Public Contract Code 20111; Government Code 53060). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

1. The purchase of equipment, material or supplies to be furnished, sold or leased to the district
2. Services, not including construction services, or special services and advice such as accounting, financial, legal or administrative matters
3. Repairs, including maintenance that is not a public project

To exclude maintenance.

"Maintenance" means routine, recurring and usual work for preserving, protecting and keeping a district facility operating in a safe, efficient and continually usable condition for the intended purpose for which it was designed, improved, constructed, altered or repaired. "Maintenance" includes, but is not limited to, carpentry, electrical, plumbing, glazing and other craft work designed to preserve the facility as well as repairs, cleaning and other operations on machinery and other permanently attached equipment. This definition does not include, among other types of work, janitorial or custodial services and protection provided by security forces, nor does it include painting, repainting or decorating other than touchup. (Public Contract Code 20115).

Unless otherwise authorized by law, contracts shall be let to the lowest responsible bidder who shall give such security as the Governing Board requires, or else all bids shall be rejected. (Public Contract Code 20111)

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. (Public Contract Code 20118.1)

The Board shall secure bids pursuant to Public Contract Code 20111 and 20112 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. (Education Code 39802)

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting after competitive bidding. (Public Contract Code 20116)

Instructions and Procedures for Advertised Bids

The Superintendent or designee shall call for bids by advertising in a local newspaper of general circulation published in the district, circulated in the county, or if no such paper exists then in some newspaper of general circulation, at least once a week for two weeks for materials, supplies, and non-construction services and not less than 14 calendar days prior to bid opening for public works projects. The notice shall state the work to be done or materials or supplies to be furnished and the time and place where bids will be opened. (Public Contract Code 20112 and 22037)

The notice shall contain the time, date and location of any mandatory prebid conference, site visit or meeting. The notice shall also detail when and where project documents, including final plan and specifications, are available. Any such mandatory visit or meeting shall not occur

within a minimum of five calendar days of the publication of the initial notice. (Public Contract Code 6610)

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

1. Recycled Content and Recycled Products (Public Contract Code 22150 et seq.)
 - a. All bidders, including bidders for printing contracts, shall specify the minimum, if not exact, percentage of recycled product in the paper products offered, and both the postconsumer and secondary waste content.
 - b. Fitness and quality being equal, the District shall purchase recycled products whenever available at no more than the total cost of non-recycled products.
2. All informal and formal bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security: (Public Contract Code 20107, 20111)
 - a. Cash
 - b. A cashier's check made payable to the district
 - c. A certified check made payable to the district
 - d. A bidder's bond executed by an admitted surety insurer and made payable to the district

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. (Public Contract Code 20111)

1. Bids shall not be accepted after the advertised bid opening time, regardless of whether the bids are actually opened at that time. (Public Contract Code 20112)
2. When two or more identical lowest or highest bids are received, the Board may determine by lot which bid shall be accepted. (Public Contract Code 20117)
3. If the district requires that the bid include prices for items that may be added to or deducted from the scope of work in the contract, depending on the availability of funds, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided in item #a, below, will be used: (Public Contract Code 20103.8)
 - a. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
 - b. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
 - c. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending on available funds as identified in the solicitation.
 - d. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.
4. Any subsequent change or alteration of a contract shall be governed by the provisions of Public Contract Code 20118.4.

5. After being opened, all submitted bids become public records pursuant to Government Code 6252 and shall be made available for review pursuant to law, Board policy, and administrative regulation.

(cf. 1340 - Access to District Records)

Bids Not Required

Upon a determination that it is in the best interest of the district, the Board may authorize the purchase, lease or contract for data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors and other personal property through a public corporation or agency ("piggyback") without advertising for bids. (Public Contract Code 20118)

(cf. 3310 - Purchasing Procedures)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the public agency shall comply with Chapter 2.5 (commencing with Section 22050).

(PCC 22035)

In cases of emergency when repair or replacements are necessary, the governing board may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing board, by contractor, or by a combination of the two.

By a four-fifths vote of the governing board, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

By a four-fifths vote of the governing board, the authority to enter emergency contracts may be delegated as long as the designee takes the action to the governing board within 7 days or at its next regularly scheduled meeting which shall be no more than 14 days after the action was taken. The designee must report at each following meeting until the action is terminated (contract completed). Code is in conflict with boards that meet on a monthly basis.

(PCC 22050)

(cf. 9323.2 - Actions by the Board)

Bids shall also not be required for day labor under circumstances specified in law. Day labor shall include the use of maintenance personnel employed on a permanent or temporary basis. (Public Contract Code 20114)

Public projects up to the Force Account Limit may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (Public Contract Code 22032)

1. School building repairs, alterations, additions
2. Painting, repainting or decorating of school buildings
3. Repair or building of apparatus or equipment
4. Improvements on school grounds
5. Maintenance work as defined above

Sole Sourcing Brand Names

Specifications for contracts for construction, alteration or repair of school facilities may not limit bidding to any one product or supplier. Specifications designating a particular brand name shall list at least two brands of comparable quality or utility and follow the description with the words "or equal." (Public Contract Code 3400)

Specifications for contracts may designate a product by brand or trade name when one or more of the following conditions apply: (Public Contract Code 3400)

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. (A) 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. (B) 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.

If the district specifies a brand name for a designated material, product, thing, or service by the specification shall be followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the District shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall 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.

Prequalification Procedure

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 Superintendent or designee shall supply a form which requires a complete statement of the bidder's financial ability and experience in performing public works. Prospective bidders shall submit the questionnaire and financial statement at least five days before the date

fixed for public opening of sealed bids. The information shall be verified under oath in the manner in which civil law pleadings are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection. (Public Contract Code 20111.5) The Superintendent or designee 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. Bidders must be deemed prequalified by the district at least one day before the fixed bid-opening date. (Public Contract Code 20111.5)

The Superintendent or designee shall furnish each qualified bidder with a standardized proposal form. Bids not presented on the standard form shall be disregarded. (Public Contract Code 20111.5)

The district may establish a procedure for prequalifying bidders on a quarterly basis and may authorize that prequalification be considered valid for up to one calendar year following the date of the initial prequalification. (Public Contract Code 20111.5)

For any contract awarded after January 1, 2014, using funds from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond if the project has projected expenditures of one million dollars or more, the District must prequalify all bidders. (Public Contract Code 20111.6) The District shall comply with all requirements of the PCC 20111.6 until its expiration on January 1, 2019.

Appeal Procedures

Contractors will be allowed to appeal a negative pre-qualification determination in accordance with California Public Contract Code §20101.d. There is no appeal from a refusal for an incomplete or late application. Without a timely appeal, the Contractor waives any and all rights to challenge the decision of the District, whether by administrative process, judicial process or any other legal process or proceeding.

In conjunction with this Pre-Qualification Policy, the District hereby establishes a Bidder Pre-Qualification Appeals Panel ("Appeals Panel"), consisting of the following three members, or their designee(s):

Two representatives of the district.
A member of an outside agency.

The sole issue before the Appeals Panel shall be the scoring of a Contractor. The decision of the Appeals Panel shall be the District's final administrative decision.

The date for submission and opening of bids for a specific project will not be delayed or postponed to allow for completion of an appeal process.

Process:

1. Prior to disqualifying a contractor, the District shall serve written notice on the contractor:
 - a. Setting forth the reasons for the disqualification.
 - b. Indicating that the contractor will be afforded an opportunity to appeal the disqualification as outlined below. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the contractor, or the contractor's agent for service of process, or any of its principal officers, partners, owners or affiliated.

1. The contractor shall submit his appeal in writing with the *(INSERT TITLE)* no later than 4:00 p.m. of the FIFTH business day following the day on which the notice of rejection was mailed to the contractor.
2. The District shall act upon properly filed requests within ten calendar days from the date of receipt of such request. If, after review, the District again rejects the contractor's application, the contractor may request an administrative hearing with the panel.
3. At the hearing, the contractor may present oral testimony concerning the contractor's capability and responsibility. The District shall notify the contractor of his decision within five business days following the hearing. The decision of the panel is final.
4. A contractor, who is denied prequalification, shall be disqualified in the same type of work or category of value for a period of one year thereafter.

Protests by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with Board policy or the bid's specifications or was not in compliance with law.

A protest must be filed in writing with the Superintendent or designee within five working days after opening of bids. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to timely file a protest shall constitute a waiver of his/her right to protest the award of the contract.

Any bidder submitting a Bid Proposal may file a protest of the District's intent to award the Contract provided that each and all of the following conditions are met:

1. The protest must be submitted in writing to the District (e-mail is not acceptable), before 4 p.m. of the FIFTH business day following bid opening.
2. The initial protest document must contain a complete statement of any and all bases for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence
3. The protest must refer to the specific portions of all documents which form the bases for the protest.
4. The protest must include the name, address and telephone number of the person representing the protesting party.
5. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Deputy Superintendent, Business Services, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Deputy Superintendent, Business Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Governing Board will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid award as reflected in the written statement of the Deputy Superintendent, Business Services or his/her designee. Action by the District's Governing Board relative to a bid award shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Governing Board. The rendition of a written statement by the Deputy Superintendent, Business Services (or his/her designee) and action by the District's Governing Board to adopt, modify or reject the disposition of the bid award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the

Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals.

6. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

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5. Develop specifications for products needed including details such as product descriptions and requirements for goods or services. Descriptions must not unduly restrict competition. The description must describe the minimum essential characteristics and standards the product must conform to.
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Micro purchase process will be used to purchase goods and services that are needed on an emergency basis, for special or last-minute catering events or for items needed only occasionally.

Micro purchasing procedures are used under the following conditions:

- a. The aggregate value of the single transaction is less than the Micro Purchase threshold as detailed in 48 CFR parts 2.
- b. The District considers the price to be reasonable.
- c. The determination that the price is reasonable is documented and included in the procurement file (This file is located within the Purchasing Department). Prices found on the internet may be used to verify that the price the District is paying is reasonable.
- d. Micro purchases are equally distributed among qualified suppliers. A qualified supplier for items picked up by District personnel at the supplier location will be defined as a supplier who will accept a District purchase order and be within five miles of the District headquarters. For emergency equipment repair, repair work will be distributed amongst those suppliers who are familiar with the brand of equipment the District uses and is authorized to work on that brand by the manufacturer and can respond within 24 hours.

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Small purchase procedures will be used to purchase goods, equipment, office supplies, and services where the aggregate cost is less than formal limit threshold and greater than the micro-purchase threshold as detailed in 48 CFR parts 2.

When small purchase procedures are used, the following conditions must be met:

- The goods, equipment, or services to be purchased will be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications may be either verbal or written. It is not necessary to send price quotes in writing, but it is the preferred method. Both written and verbal methods must be documented.
- Specifications/food descriptions must be sent by fax or e-mail or communicated by telephone or in person to an adequate number of suppliers. A list of potential suppliers will be developed, maintained, and added to throughout the course of the school year. During the summer, the District will solicit potential suppliers to determine their interest level in being added to the small purchase procurement list. The District will network with other appropriate personnel to obtain supplier contact information, as well as to obtain feedback regarding service and product quality. The list developed will be used to contact interested suppliers throughout the school year. Suppliers will be added to this list upon request. The list will be maintained by the Purchasing Department.
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- Price quotation responses will be retained by the District in the Purchasing Department with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The District will utilize its purchase documentation form and/or supplier contract form for this purpose.

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EFC (1 of Competitive Formal procurement procedures – Information for Bid (IFB) or Request for Proposal (RFP) - will be used to purchase goods, equipment, and services where the aggregate cost is more than [the formal limit threshold as detailed in 48 CFR parts 2](#).

When competitive formal procurement procedures are used, the following conditions, stipulations, and terms must be met:

- The bid must be free of actions that might inhibit competition and allow the supplier adequate time to complete the bid.
- The bid must be advertised and include the general nature of the goods or services to be procured; method of procurement that will be used; how the supplier can obtain more information; and the due date for the responses to the bid. The bid must be [publicly](#) advertised one week a part in a newspaper of general circulation per California PCC section 20112. The bid may also be advertised on the District website.
- Bids will be solicited from an adequate number of known suppliers in sufficient time prior to the date set for the opening of the bids. Bids will be mailed or emailed to those suppliers who have previously requested to do business with the District.
- The date that all addenda, changes, or answers to questions will be posted regarding the bid must be included in the original bid document as well as the website where the answers will be posted.
- The invitations for bid will clearly define the items or services needed in order for the bidders to be able to properly respond. This includes product specifications and general purchasing conditions.
- Suppliers wishing to bid on the contract may not assist the District in the development of the bid or the specifications for product/goods. This includes offering the services free of charge for the development of the specifications.
- The bid document must contain the following written requirement: “All rebates, discounts, and other applicable credits must be returned to the District”.
- Any and all bids may be rejected when there is sound documented reasons rejecting is in the best interest of the District.
- Bid award will be based on low bid after verifying that the supplier with the low bid is responsive and responsible, meets the product specifications, and after performing a cost analysis.
- When using a Request for Proposal (RFP) in compliance with federal and state guidelines, the evaluation criteria must be included in the bid package and price must be the highest weighted factor. In addition to price, the evaluation criteria may include categories such as: Flavor & Quality, Past Performance, Minimums, Delivery Days and Times. A description of the Scoring System must be included in the RFP which will explain the scoring criteria for each category.
- During the evaluation phase, the evaluation criteria, other than price, must first be evaluated prior to evaluating price. There should be a committee of at least 2 persons who did not write the bid, evaluate the technical criteria of the RFP. The RFP is to be awarded to the most responsive, responsible supplier who submitted the lowest price as determined by the evaluation criteria.

- Responses from suppliers must be in writing; signed by the authorized authority to submit the bid, be returned in a sealed envelope on or before the date and time specified and to the place specified in the bid documents.
- Bids not received on time will be returned to the bidder unopened.
- Bid proposals will be retained by the District with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.

The recommendation for bid award must be submitted to District’s Board for the award of the bid.

- When the District chooses, purchases may be made through a cooperative agreement or piggybacking with other school districts when all legal procurement procedures are followed as required.
- For cooperative purchasing, District must maintain on file for the current year plus three additional years, a copy of the bid; proof of advertising; and bid award documents from the awarding District’s Board.
- For piggybacking, District must obtain permission from the District awarding the bid and the supplier awarded the bid. A copy of the bid, including the piggyback clause, proof of advertising, and proof of award from the awarding District’s Board must be kept on file for the current year plus three additional years.

Non-Competitive Proposal (Sole Source):

These types of proposals will be used only when procurement is not feasible under the small purchase procedures, sealed bid (formal advertising), or competitive proposals. The decision to use noncompetitive proposal will be justified in writing, approved by CDE, and be available for audit and review.

Circumstances under which procurement may be conducted by noncompetitive proposal may be used only when one or more of the following circumstances apply (CFR 200.320):

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity;
or
- After solicitation of a number of sources, competition is determined inadequate.

Regulation _____ SCHOOL DISTRICT

Approved: _____, 20____, _____, California

Revised:

VISTA UNIFIED SCHOOL DISTRICT

ADMINISTRATIVE REGULATION NO. 3311

Business and Non-instructional Operations **BIDS/PROCUREMENT**

PROCUREMENT PLAN FOR ALL DISTRICT PROGRAMS TO INCLUDE FEDERALLY FUNDED PROGRAMS (to include Child Nutrition Services, Special Education IDEA, Title Programs)

Procurement is the multistep process for acquiring the best possible goods and services at the lowest possible price. Vista Unified School District (District) will purchase items for use in the School Nutrition Programs (SNP) and in Federally funded programs in compliance with 2 CFR Part 200, State and District regulations, using the procedures outlined as follows and in the attached chart of procedures.

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The Board believes that competition helps ensure that goods, equipment, and services will be obtained at the lowest possible cost. The procurement procedures used by the District will not unduly restrict or eliminate competition.

When making procurement decisions, the District will follow the subsequent four fundamentals principals:

1. Follow the Buy American provision.
2. Follow the more restrictive bid threshold, whether it be the federal, state or local threshold.
3. Ensure that full and open competition exists to the maximum extent possible.
4. Award contracts to the most responsible and responsive bidders.

Prior to beginning the procurement procedures outlined in this document, the District will:

1. Complete a needs assessment and an accurate forecast – to the best ability of the District.
2. Determine that the item(s) are necessary and does not duplicate items and/or bid(s) the District already has in place.
3. With equipment, the District will determine the most economical approach – lease vs. buy – prior to preparing a solicitation.
4. Determine the bid threshold in order to determine what method of procurement will be used for the goods or services
5. Develop specifications for products needed including details such as product descriptions and requirements for goods or services. Descriptions must not unduly restrict competition. The description must describe the minimum essential characteristics and standards the product must conform to.
6. Developing evaluation criteria if using a Request for Proposal (RFP) prior to releasing the bid document

7. All procurements will be handled by the Purchasing Department. No other Department is authorized to procure materials, goods, and services unless designated by the Assistant Superintendent, Business Services or designee.

PROCUREMENT OPTIONS:

Micro Purchase Procedures

Micro purchase process will be used to purchase goods and services that are needed on an emergency basis, for special or last-minute catering events or for items needed only occasionally.

Micro purchasing procedures are used under the following conditions:

- a. The aggregate value of the single transaction is under \$3500.
- b. The District considers the price to be reasonable.
- c. The determination that the price is reasonable is documented and included in the procurement file (This file is located within the Purchasing Department). Prices found on the internet may be used to verify that the price the District is paying is reasonable.
- d. Micro purchases are equally distributed among qualified suppliers. A qualified supplier for items picked up by District personnel at the supplier location will be defined as a supplier who will accept a District purchase order and be within five miles of the District headquarters. For emergency equipment repair, repair work will be distributed amongst those suppliers who are familiar with the brand of equipment the District uses and is authorized to work on that brand by the manufacturer and can respond within 24 hours.

Small Purchase Procedures

Small purchase procedures will be used to purchase goods, equipment, office supplies, and services where the aggregate cost is less than \$88,300 and greater than \$3,500.

When small purchase procedures are used, the following conditions must be met:

- The goods, equipment, or services to be purchased will be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications may be either verbal or written. It is not necessary to send price quotes in writing, but it is the preferred method. Both written and verbal methods must be documented.
- Specifications/food descriptions must be sent by fax or e-mail or communicated by telephone or in person to an adequate number of suppliers. A list of potential suppliers will be developed, maintained, and added to throughout the course of the school year. During the summer, the District will solicit potential suppliers to determine their interest level in being added to the

small purchase procurement list. The District will network with other appropriate personnel to obtain supplier contact information, as well as to obtain feedback regarding service and product quality. The list developed will be used to contact interested suppliers throughout the school year. Suppliers will be added to this list upon request. The list will be maintained by the Purchasing Department.

- Responses from suppliers may be in either the written or verbal form. Verbal quotes must be documented. The District's purchase documentation form and /or supplier contract form contained herein will be used for this purpose.
- Price quotation responses will be retained by the District in the Purchasing Department with other program documentation and records for a period of 3-years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The District will utilize its purchase documentation form and/or supplier contract form for this purpose.

Competitive Formal Procurement

Competitive Formal procurement procedures – Information for Bid (IFB) or Request for Proposal (RFP) - will be used to purchase goods, equipment, and services where the aggregate cost is more than the formal bid limit.

When competitive formal procurement procedures are used, the following conditions, stipulations, and terms must be met:

- The bid must be free of actions that might inhibit competition and allow the supplier adequate time to complete the bid.
- The bid must be advertised and include the general nature of the goods or services to be procured; method of procurement that will be used; how the supplier can obtain more information; and the due date for the responses to the bid. The bid must be publicly advertised one week a part in a newspaper of general circulation per California PCC section 20112. The bid may also be advertised on the District website.
- Bids will be solicited from an adequate number of known suppliers in sufficient time prior to the date set for the opening of the bids. Bids will be mailed or emailed to those suppliers who have previously requested to do business with the District.
- The date that all addenda, changes, or answers to questions will be posted regarding the bid must be included in the original bid document as well as the website where the answers will be posted.
- The invitations for bid will clearly define the items or services needed in order for the bidders to be able to properly respond. This includes product

specifications and general purchasing conditions.

- Suppliers wishing to bid on the contract may not assist the District in the development of the bid or the specifications for product/goods. This includes offering the services free of charge for the development of the specifications.
- The bid document must contain the following written requirement: “All rebates, discounts, and other applicable credits must be returned to the District”.
- Any and all bids may be rejected when there is sound documented reasons rejecting is in the best interest of the District.
- Bid award will be based on low bid after verifying that the supplier with the low bid is responsive and responsible, meets the product specifications, and after performing a cost analysis.
- When using a Request for Proposal (RFP) in compliance with federal and state guidelines, the evaluation criteria must be included in the bid package and price must be the highest weighted factor. In addition to price, the evaluation criteria may include categories such as: Flavor & Quality, Past Performance, Minimums, Delivery Days and Times. A description of the Scoring System must be included in the RFP which will explain the scoring criteria for each category.
- During the evaluation phase, the evaluation criteria, other than price, must first be evaluated prior to evaluating price. There should be a committee of at least 2 persons who did not write the bid, evaluate the technical criteria of the RFP. The RFP is to be awarded to the most responsive, responsible supplier who submitted the lowest price as determined by the evaluation criteria.
- Responses from suppliers must be in writing; signed by the authorized authority to submit the bid, be returned in a sealed envelope on or before the date and time specified and to the place specified in the bid documents.
- Bids not received on time will be returned to the bidder unopened.
- Bid proposals will be retained by the District with other program documentation and records for a period of 3-years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.
- The recommendation for bid award must be submitted to District’s Board for the award of the bid.
- When the District chooses, purchases may be made through a cooperative agreement or piggybacking with other school districts when all legal procurement procedures are followed as required.

- For cooperative purchasing, District must maintain on file for the current year plus three additional years, a copy of the bid; proof of advertising; and bid award documents from the awarding District's Board.
- For piggybacking, District must obtain permission from the District awarding the bid and the supplier awarded the bid. A copy of the bid, including the piggyback clause, proof of advertising, and proof of award from the awarding District's Board must be kept on file for the current year plus three additional years.

Non-Competitive Proposal (Sole Source):

These types of proposals will be used only when procurement is not feasible under the small purchase procedures, sealed bid (formal advertising), or competitive proposals. The decision to use noncompetitive proposal will be justified in writing, approved by CDE, and be available for audit and review.

Circumstances under which procurement may be conducted by noncompetitive proposal will be limited to one of the following:

- The merchandise or service is available only from a single source. The Purchasing Department will provide documentation that the merchandise or service is not available from any other source.
- An emergency exists, and the urgency for the requirement will not permit the delay involved with sealed bids (formal advertising) or competitive proposal. Emergency conditions must be documented by the requesting Department.
- After solicitation from a number of sources, competition is found to be lacking.

CHART OF PROCEDURES

The District will purchase the following products or group of products and services as per the stated purchase period using the identified procurement method.

Price quote time frame period is defined as the time frame for which bids or quotes are obtained and awarded.

Product	Price Quote Time Frame	Procurement Method Used
Milk	Annually- with 2 year renewal option	Cooperative Competitive Sealed Bids (RFP)
Bread	Annually – with 2-year renewal option	Cooperative Competitive Sealed Bids (RFP)
Staples	Annually – with 2-year renewal option	Cooperative Competitive Sealed Bids (RFP)
Fresh Produce	Annually – with 2-year renewal option	Cooperative Competitive Sealed Bids (RFP)
Frozen Foods	Annually - with 2-year renewal options	Cooperative Competitive Sealed Bids (RFP)
Pest Control	Annually- with 2-year renewal option	Small Purchase Procedure
Processed Commodities	Annually- with 2-year renewal option	Cooperative Competitive Sealed Bids
Paper products (disposables)	Annually – with 2-year renewal option	Cooperative Competitive Sealed Bid (RFP)
Snack Items	Annually- with 3-year renewal option	Cooperative Competitive Sealed Bid (RFP)
Armored Services	Annually – with 4-year renewal option	Small Purchase Procedure
Hood Cleaning and Fire Inspection	Annually- with 2-year renewal option	Small Purchase Procedure
Chemicals	Annually - with 2-year renewal option	Small Purchase Procedure
Small equipment	As Needed	Small Purchase Procedure
Large equipment	As Needed	Small Purchase Procedure or Competitive Sealed Bids
Vehicle Washing and Waxing	Annually- with 2-year renewal option	Small Purchase Procedure
Office supplies	As needed	Small purchase procedure Or cooperative bid
Grease Interceptor Pumping	Annually- with 2-year renewal option	Small Purchase Procedure
Supplies/Catering	As needed	Micro purchase
Laundry	Annually- with 2-year	Small Purchase Procedure

	renewal option	
Services	Annually—with 2-year renewal option	Dependent upon level of Service to be provided
Public Works	As Needed	Dependent upon dollar amount. Any amount over \$1,000 will follow Labor Code Requirements. See Purchasing Overview Chart as Exhibit 1.
Materials and Equipment not part of Child Nutrition Services, but Federally funded	As needed or through Cooperative Competitive Sealed Bids such as NCEPC or appropriate supplier.	Dependent upon dollar amount of Transaction.

Advertised Bids

Whenever expenditures exceed the amount specified in Public Contract Code Section 20111 for the purchase of equipment, supplies, and certain services, the Chief Business Officer or designee 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 reserves the right to reject all bids for any reason.

The District has adopted the California Uniform Public Construction Cost Accounting Act procedures under Public Contract Code Section 22000 ET SEQ. (“CUPCCAA”). Accordingly, the acquisition of maintenance work and public projects, as both are defined under Public Contract Code Section 22002, shall comply with CUPCCAA’s bidding procedures.

1. Formal bids for public projects and maintenance projects:

Public Projects and maintenance projects involving expenditures of more than the current “formal bid limit” pursuant to CUPCCAA, shall be advertised and let by formal bidding procedures as required. Without further action, if the State of California revises this formal bid limit, the District shall comply with that new formal limit.

2. Informal bids for public projects and maintenance projects:

Public projects and maintenance projects involving expenditures between the current informal limit (informal bid range) pursuant to CUPCCAA, shall be let by informal bidding procedures as required. Without further action if the State of California revises this informal bid range, the District shall comply with that new informal limit.

3. Public projects and maintenance projects less than the informal bid range:

Public projects and maintenance projects involving expenditures of less than the informal limit may be let by negotiated contract, by purchase order, or by force account. Without further action, if the State of California revises this minimum threshold, the District shall comply with that new minimum threshold. The District shall seek quotes, when feasible, for public projects and maintenance work within the informal bid range.

4. Discretion to reject bids:

In accordance with Public Contract Code section 22038, the District may reject any bids presented, if, prior to rejecting all bids and declaring that the project can be more economically performed by District employees, the District furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the District's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the District intends to reject the bid. If after the first invitation of bids, all bids are rejected, after reevaluating its cost estimates of the project, the District may do either of the following:

- (1) Abandon the project or re-advertise for bids in the manner described by CUPCCAA.
- (2) By passage of a resolution by four-fifths vote of the governing board declaring that the project can be performed more economically by District employees, may have the project done by force account without further complying with this article.

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 45103.1.

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.
7. After being opened, all advertised bids shall be made available for review by all interested parties in the Business Services or Purchasing Departments. Bids will not be removed by interested parties from the department maintaining the records.

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.

Professional services, personal services, and advisory services as outlined in Government Code 53060 are exempt from competitive bids unless the contracts meet the criteria outlined in Education Code 45103.1. 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 Chief Business Officer or 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 Chief Business Officer or 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 Chief Business Officer or 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 quantity purchases, thereby effecting economics.
2. Bid instructions and specifications should be clear and complete, setting forth all necessary conditions conducive to competitive bidding.
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 suppliers 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:

- \$ - \$5,000 Pricing/quotations will not normally be solicited unless the items are of a price volatile nature, such as office supplies, software, and others.
- \$ - \$3,500 Exception: Federally Funded Programs, purchasing staff will solicit at least 3 quotes in writing.
- \$5,000 – up The Purchasing staff will solicit at least three quotes in writing.
- \$88,300 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 (Public Contract Code 20116) this amount is annually updated by the Superintendent of Public Instruction on January 1 of each year. Without further action, if the State of California revises the formal bid limit, the District shall comply with that new formal bid limit.

5. Legal formal bids are required for:

Public Works/Services (each Public Works project/services) over \$45,000 (California Uniform Public Construction Cost Accounting Act procedures under Public Contract Code Section 22000 ET SEQ. (“CUPCAA”).

Supplies, equipment, and materials legal limit as prescribed by Public Contract Code 20111.

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 Chief Business Officer or designee in advance of Board meetings to permit time for tabulating and evaluating the bids to make recommendations for Board acceptance, at least five days prior to the meeting date. The bid results will be provided to all companies participating in bid process within three working days after bids are opened. Bid documents will not be removed from either the Business Services or Purchasing Departments.
3. Bids will be received at the prescribed time and place indicated in the Notice to Bidders. No bid may be accepted after said advertised time unless bid opening time and place are changed through an authorized issued addendum. All authorized issued addenda will be issued no later than 72 hours prior to advertise bid opening date.
4. Bids will then be returned to the designated office at the prescribed time and place indicated on the Notice to Bidders for opening and evaluation. Review of submitted bids by interested parties will be allowed after issuance of bid results. Appointments will be made with the appropriate 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**
 - A. Any actual or prospective bidder may protest a bid award if he/she believes the award is not in compliance with the law, does not follow bid procedures, or does not meet bid specifications. A protest must be filed with the Assistant Superintendent of Business Services. Such protests must be made in writing and received by the Assistant Superintendent of Business Services within five working days of bid award date and shall include all documents supporting or justifying the protest. The protesting party must mail or deliver copies of the protest to the District. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.
 - B. In the event of a timely protest, the District shall not proceed further with the solicitation or award of the contract until the protest is resolved.
 - C. The Assistant Superintendent of Business Services shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The Assistant Superintendent of Business Services may also convene a meeting with the bidder in order to attempt to resolve the problem.
 - D. If the bidder is not satisfied with the Assistant Superintendent of Business Services' decision, the bidder may appeal to the District's Board. The District shall provide notice to the bidder the date and time for the Board consideration of

the protest at least three business days before the Board meeting. The Board's decision shall be final.

E. A Formal protest must be sworn and contain:

1. A specific identification of the statutory or regulatory provision that the protesting party alleges has been violated.
2. A specific description of each action by the District that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified.
3. A precise statement of the relevant facts.
4. A statement of any issues of law or fact that the protesting party contends must be resolved.
5. A statement of the argument and authorities that the protesting party offers in support of the protest.
6. A statement that copies of the protest have been mailed or delivered to the Assistant Superintendent of Business and all other identifiable interested parties.

F. The District may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal. The District may solicit written responses to the protest from other interested parties.

G. If the protest is not resolved by mutual agreement, the District shall issue a written determination that resolves the protest.

1. If the District determines that no violation of statutory or regulatory provisions has occurred, then the District shall inform the protesting party and other interested parties by letter that sets forth the reasons for the determination.
2. If the District determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the District shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.
3. If the District determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the District shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.

- H. The District shall maintain all documentation on the purchasing process that is the subject or a protest or appeal in accordance with the District's record retention schedule.

Brand Name or equivalents

- A. When a brand name and code is used in the product description, the description will always include an "or equal" clause
- B. The District will provide a copy of the specified brand/code upon request so suppliers may verify the product they are bidding is actually an equal. It is the supplier's responsibility to request the information.
- C. Suppliers bidding an item as "equal" product may be required to furnish to District a product specification sheet and sample case for testing and verification as an "or equal" product.

Alternative Bid Procedures for Technological Supplies and Equipment

Upon a finding by the Board that a particular procurement qualifies for the alternative procedure, the District may acquire computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus through competitive negotiation. This procedure shall not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public. (Public Contract Code 20118.2)

The competitive negotiation shall include, but not be limited to, the following requirements: (Public Contract Code 20118.1)

1. The Chief Business Officer or designee shall prepare a request for proposals (RFP) that shall be submitted to an adequate number of qualified sources, as determined by the District, to permit reasonable competition consistent with the nature and requirement of the procurement.
2. Notice of the RFP shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
3. The District shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the RFP is received.
4. The RFP shall identify all significant evaluation factors, including price, and their relative importance.
5. The District shall provide reasonable procedures for the technical evaluation of the RFPs received, the identification of qualified sources, and the selection for the award of the contract.

6. An award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the District with price and all other factors considered.
7. If an award is not made to the bidder whose proposal contains the lowest price, then the District shall make a finding setting forth the basis for the award.
8. The District, at its discretion, may reject all proposals and request new RFPs.

Rights of the Board Concerning Bids

The Board 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 supplier 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 supplier 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 3-years."

Bids Not Required

Without advertising for bids and upon a determination that it is in the best interest of the District, the Board may authorize, by contract, lease, requisition, or purchase order, another public corporation or agency to lease data-processing equipment or to purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the District in the manner that the other public corporation or agency is authorized to make the leases or purchases from a supplier ("piggyback"). (Public Contract Code 20118)

Alternatively, if there is an existing contract between a public corporation or agency and a supplier for the lease or purchase of personal property, the District may authorize the lease or purchase of personal property directly from the supplier by contract, lease, requisition, or purchase order and make payment to the supplier under the same terms that are available to the public corporation or agency under the contract. (Public Contract Code 20118)

Supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals may be purchased in any amount without taking estimates or advertising for bids. (Public Contract Code 20118.3)

Perishable commodities, such as foodstuffs, needed in the operations of cafeterias may be purchased through bid or on the open market. (Education Code 38083)

In an emergency when any repairs, alterations, work, or improvement to any school facility is necessary to permit the continuance of existing school classes or to avoid danger to life or property, the Board may, by unanimous vote and with the approval of the County Superintendent of Schools, contract for labor and materials or supplies without advertising for or inviting bids or may authorize the use of day labor or force account for the emergency purpose. (Public Contract Code 20113)

Contract Management

Suppliers will be monitored to ensure compliance with contract requirements. This can include:

1. **PRODUCT INSPECTION:** All items are subject to the inspection by the District. Defective items must be made good by the successful supplier, and unsuitable items may be rejected. Any item found to be defective must be corrected to District's satisfaction prior to payment.
2. **RIGHT TO AUDIT:** For contracts with fixed cost plus delivery fee, District shall audit a minimum of 10 awarded items at a minimum of twice yearly to verify supplier is charging the correct fixed pricing.
3. **PRICING DISCREPANCY PENALTY:** District shall verify all pricing on invoices with awarded bid pricing prior to payment. Should supplier overcharge District for any item, the District will request full reimbursement for the overcharge. The second time the supplier is notified of the overcharge, the District will assess an additional two hundred percent (200%) penalty.

Contractor involvement (Conflict of Interest)

Potential suppliers may not be allowed to assist the District in developing the specifications, bid documents or contracts if they will be bidding on the specified item and/or project.

When possible, small and minority businesses, Women's business enterprises and labor surplus area firms maybe given preference if outlined in board policy.

Successful bidders must certify that they practice equal employment opportunity and that they do not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The successful bidder shall take affirmative actions to insure that applicants are employed, and that employees are treated fairly 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.

The District will require the successful bidder to provide proof of having and maintaining during the life of any contract with the District, 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 of any contract the District enters into. The minimum amounts of such insurance shall be:

- 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 the District as additional insured.
- Certificate to be submitted by successful proposer to the District prior to start of deliveries.

The District will not enter into a contract with any company or individual that has been debarred or suspended.

Suppliers awarded contracts are required to submit a completed Affidavit of Noncollusion, Debarment and Suspension Certificate, Certification of Lobbying, and Disclosure of Lobbying activities (Federal Programs Only). These forms will be included in the proposal package and must be completed prior to commencement of work.

Sole Sourcing

Specifications for contracts for construction, alteration, or repair of school facilities may not limit bidding, either directly or indirectly, to any one specific concern. Specifications designating a specific material, product, thing, or particular brand name shall follow the description with the words "or equal" so that bidders may furnish any equal material, product, thing, or service. (Public Contract Code 3400)

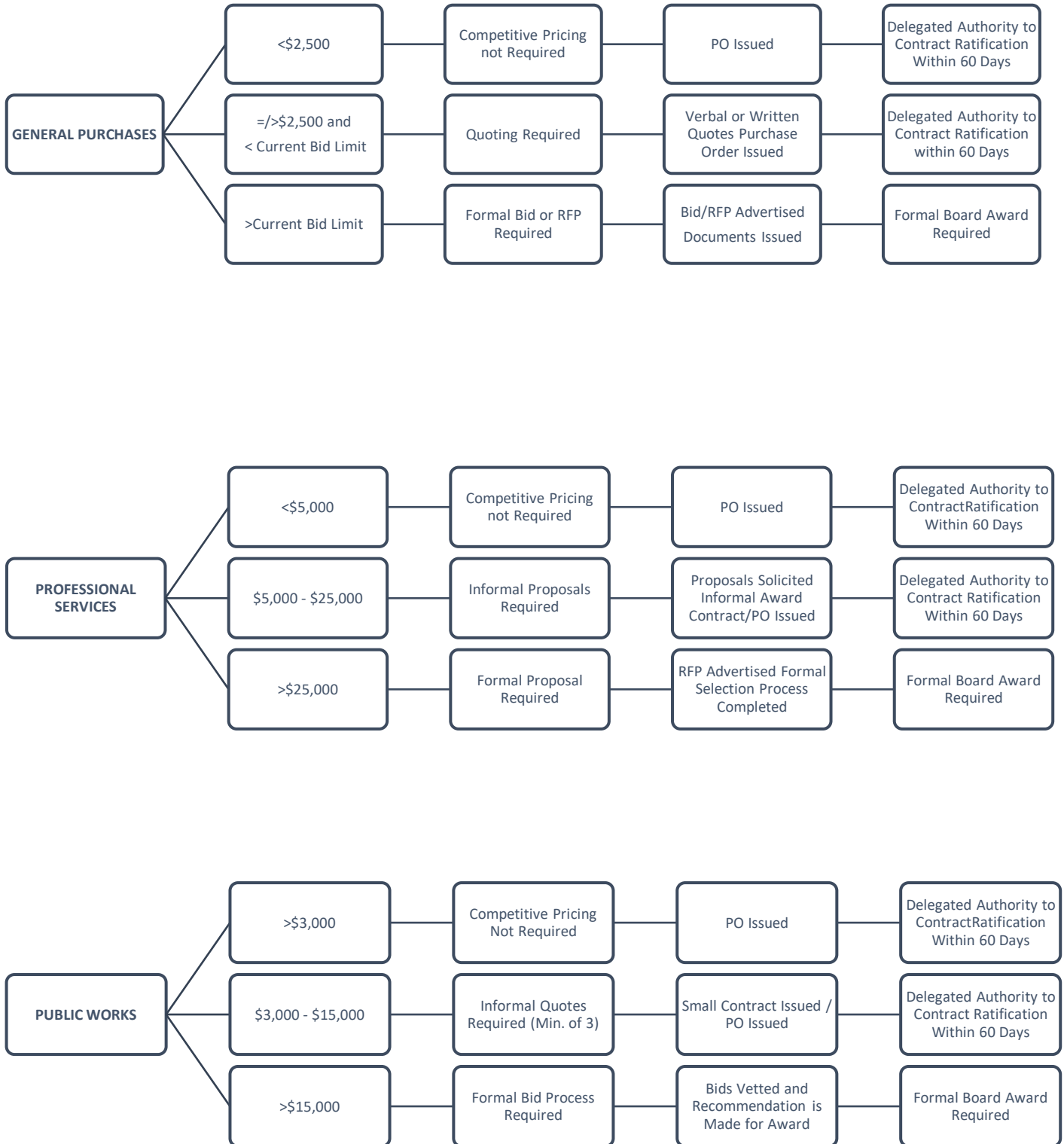
However, specifications for such contracts may designate a product by brand or trade name (sole sourcing) if the Board has made a finding, described in the Invitation for Bids or Request for Proposals (RFP), that a particular material, product, thing, or service is designated for any of the following purposes: (Public Contract Code 3400)

1. To conduct a field test or experiment to determine its suitability for future use
2. To match others in use on a particular public improvement that has been completed or is in the course of completion
3. To obtain a necessary item that is only available from one source
4. To respond to the Board's declaration of an emergency, as long as the declaration has been approved by four-fifths of the Board when issuing the Invitation for Bid or RFP.

Administrative Regulation Reviewed -1st Reading: August 19, 2010
2nd Reading & Adoption: September 9, 2010
Reviewed/Approved: November 30, 2015
Reviewed/Approved: January 4, 2017

PURCHASING PROCESS FLOWCHART

The following is a sample process based on a district's internal policies and legal code requirements. Amounts may differ among districts.



BID LIMITS

Component (Definition)	Bid Limits as of 1/1/2021
<p>EQUIPMENT, MATERIALS, SUPPLIES <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 (Gov. 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>	\$97,600
<p>NON-CONSTRUCTION SERVICES <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>	\$97,600
<p>MAINTENANCE <u>20111(3)(2); 20651(a)(3) 20656</u> 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>	\$97,600
<p>PUBLIC PROJECT WORK <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>	\$15,000 Labor & Materials
<p>FORCE ACCOUNT OR DAY LABOR <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>	350 hours <35,000 ADA 750 hours or \$21,000 if >35,000 ADA or >15,000 FTE for Comm. College
<p>CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT <u>22032(a)(b)(c)</u> Performed by employees (Force Account), purchase order, or negotiated contract: Let by informal bid: (if all bids exceed \$175,000, may award up to \$187,500) Formal Bid:</p>	\$60,000 or less \$60,001 to \$200,000 >\$200,000
<p>TRANSPORTATION AGREEMENTS Education Code 39802 Transportation contracts must be bid when the total expenditure exceeds \$10,000 and the services are provided by 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. (Municipally owned does not include school districts.) The governing board may let the contract for the service to other than the lowest bidder. Ed. Code, § 39802. 32</p>	\$10,000
<p>FEDERAL BID LIMITS Micro Purchase Small Purchase (Simplified Acquisition - (FAR at 48 CFR 2.101 and in accordance with 41 U.S.C. 1908) Formal Limit If State procedures establish a lower cost threshold, the lower threshold is required to be applied in accordance with 2 CFR section 200.317</p>	\$10,000 \$10,001 - \$250,000 >\$250,000
<p>TIME LIMITS ON CONTINUING CONTRACTS: (Education Code section 17596) Work, all services, apparatus or equipment: Materials or supplies: Equipment Lease:</p>	5 Years 3 Years 10 Years

PURCHASING CARD PROGRAM

**CARDHOLDER MANUAL
OF
POLICY AND PROCEDURES**

TABLE OF CONTENTS

Purchasing Card Policy		3
Purchasing Card Procedures		4
1.0	Purpose	4
2.0	Cardholder Manual of Policy and Procedures	4
3.0	Introduction	4
4.0	Receiving the Purchasing Card	5
5.0	Authorized Card Use	5
6.0	Unauthorized and/or Inappropriate Card Use	6
7.0	Making a Purchase with the Purchasing Card	8
8.0	Merchandise Returns and Exchanges	8
9.0	Record Retention	9
10.0	Cardholder Verification of Charges	9
11.0	Cardholder Charge Dispute Resolution	10
12.0	Department Head Verification of Cardholder Charges	11
13.0	Purchasing Card Security	13
14.0	Lost, Stolen, or Damaged Purchasing Cards	12
15.0	Cardholder Account Maintenance	12
16.0	Cardholder Transfer within the District's	12
17.0	Cardholder Separation from the District's	13
18.0	Contact Information	13
Appendix		14
	Purchasing Card Agreement Form -- Form PC-01	A
	Purchasing Card Enrollment Form (Application) -- Form PC-02	B
	Purchasing Card Dispute Form -- Form PC-03	C
	Purchasing Card Change Form -- Form PC-05	D
	Purchasing Card Missing Receipt Form -- Form PC-06	E
	Purchasing Card Cancellation Form -- Form PC-07	F

PURCHASING CARD POLICY

The _____ is designated as the Purchasing Card Program Administrator and is authorized to augment purchasing procedures by opening and maintaining credit card accounts for use by the Purchasing Department, and other selected staff members as prescribed by Purchasing Card Procedures. The Purchasing Card Program Administrator 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 _____ District. All purchases shall conform to the purchasing Policy and Procedures currently established by the Governing Board.

PURCHASING CARD PROCEDURES

1.0 PURPOSE:

The Purchasing Card Program (P-Card) has been established by the _____ District in association with _____ and _____ to facilitate the purchase of certain small dollar value items by selected full-time permanent employees (Cardholders) of the _____ District.

2.0 CARDHOLDER MANUAL OF POLICY AND PROCEDURES:

This Cardholder Manual of Policy and Procedures sets forth the Policy and Procedures for the _____ District's Purchasing Card program. It has been developed to provide the Cardholder with information regarding the benefits of P-Cards, the responsibilities that come with the issuance of a P-Card, and the rules that must be followed by the Cardholder. Each Cardholder is required to read and agree to follow the Policy and Procedures contained in this entire document. By completing and signing the Purchasing Card Agreement Form, the Cardholder is acknowledging that he/she has read and understands the Cardholder Manual of Policy and Procedures and agrees to follow them. The Cardholder should keep the Manual for future reference.

3.0 INTRODUCTION:

The _____ District's Purchasing Card Program has been established to provide a convenient means with which to make small dollar value purchases and reduce the costs associated with initiating and paying for those purchases. The _____ is responsible for administering and managing the Program and acting as the main contact for the _____ District. The _____ District will issue payment for authorized charges made with the Purchasing Card.

The Cardholder is a _____ District full-time, permanent employee whose name appears on the Purchasing Card and is accountable for all charges made with that card.

The Department Head is a _____ District employee(s) within each department responsible for verifying that all charges against the Cardholder's account are authorized and approved, and that the original documentation for each Cardholder is forwarded to Internal Business Services on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate account numbers. A Department Head may oversee more than one Cardholder account depending on how the Department Head elects to manage its accounts. A department may have more than one Department Head.

The Cardholder is a _____ District full-time, permanent employee whose name appears on the Purchasing Card and is accountable for all charges made with that card.

The Department Head is a _____ District employee(s) within each department responsible for verifying that all charges against the Cardholder's account are authorized and approved, and that the original documentation for each Cardholder is forwarded to

_____ on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate account numbers. A department head may oversee more than one Cardholder account depending on how the department heads elects to manage its accounts. A department may have more than one Department Head.

Each department is responsible for managing its Cardholder accounts. Two areas of responsibility, the Cardholder and the Department Head, have been defined within each department to assist in this management effort. It is important to understand that these areas of responsibility do not necessarily equate to two separate individuals within the department. It is permissible for one individual to be assigned one or more of these responsibilities as defined in these Policy and Procedures. The ultimate decision as to how each of these responsibilities is assigned will be made within each department.

4.0 RECEIVING THE PURCHASING CARD:

4.1 A complete Purchasing Card Agreement Form (*see Appendix A*) and a Purchasing Card Enrollment Form / Application (*see Appendix B*) must be submitted for each prospective Cardholder. The Assistant Superintendent of Business Services establishes control limits on a per Cardholder basis. The Department Head will sign the forms and forward them to the Program Administrator. Signature stamps are not allowed.

4.2 Transaction Spending Limit: A per item dollar limitation of purchasing authority will be assigned to the Cardholder for each transaction made with the Purchasing Card. This amount must not exceed the predetermined spending limit. A single transaction/charge may include multiple items but cannot exceed the predetermined spending limit.

4.3 Monthly Spending Limit: A monthly dollar limitation of purchasing authority will be assigned to the Cardholder for the total of all charges made during each monthly billing cycle.

4.4 Additional Control limits will include:

- Dollar limit and Number of times of use per day
- Dollar limit and Number of times of use per month
- Authorized Merchant Category Code
- Prohibited merchant types

Control limits changes may be requested by completing the Purchasing Card Change Form (*see Appendix E*) indicating the changes desired and submitted to the Purchasing Card Program Administrator for processing. If approved, changes go into effect within 72 hours from the time they are received by MFCU Card Services.

4.5 All prospective Cardholders must read, understand, and sign the Purchasing Card Agreement Form agreeing to follow the Cardholder Policy and Procedures and attend a training session prior to receiving a Purchasing Card. Once the Purchasing Card has been received, the Cardholder will be notified.

4.6 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 issued.

5.0 AUTHORIZED CARD USE:

5.1 Cardholders are authorized to use the Purchasing Card to purchase merchandise required as a function of their duties at the District's. Cardholders may not make purchases for anyone else.

5.2 Certain classifications of products or services designated by Merchant Category Codes (MCC) may be excluded when the card is originally set up. Merchant Category Codes (MCC) are groups of standard industry classification codes, or basically the primary type of business conducted by a supplier. If the Cardholder attempts to use the Purchasing Card at a supplier or merchant that is not authorized, the transaction will be declined.

5.3 Only the Cardholder whose name is embossed on the Purchasing Card is authorized to use the card. The Cardholder is responsible for ensuring that all charges made with the card are in compliance with these Policy and Procedures as well as all _____ District Policy and Procedures.

5.4 The total value of any one charge made with the Purchasing Card may not exceed the single transaction limit stipulated on the Purchasing Card Enrollment / Application Form (*see Appendix B*).

5.5 The Purchasing Department must be used, instead of a P-Card, if the purchase of item(s) through quotes could save a material dollar value or is required by law.

5.6 No items that are subject to bidding or that are currently under contract may be acquired using a Purchasing Card. If an item is on a bid award, then the bid must be utilized. This list may not be all-inclusive as items may require bidding based on volume of purchase.

- AV Equipment & Supplies
- Bottled Water
- Computer Printer
- Copier
- Custodial Chemical
- Custodial Supplies
- Data Processing Supplies
- Enterprise Computer
- Furniture
- PE Supplies and Equipment,
- Office and School Supplies

5.7 The Purchasing Card must not circumvent the District's Purchasing and Contracting Policy and Administrative Regulation No. _____ regarding procurement of supplies, equipment and services and the established processes and dollar amounts set in place regarding quotes and bids.

6.0 UNAUTHORIZED AND/OR INAPPROPRIATE CARD USE:

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

6.2 The Purchasing Card is to be used exclusively by the Cardholder to make authorized purchases at community business establishments. The Purchasing Card should never be used to purchase personal items. The Purchasing Card shall never be loaned to, or used by, anyone other than the Cardholder whose name appears on the face of the card.

6.3 A Cardholder who makes an unauthorized purchase with the Purchasing Card or uses the Purchasing Card in an inappropriate manner will be subject to disciplinary action that can include possible card cancellation and termination of employment. If the purchasing card is inadvertently used for a personal purchase, call the Purchasing Card Program Administrator immediately.

6.4. Failure to comply with the requirements of this Cardholder Manual and District's Policy and Procedures may result in immediate revocation of purchasing card privileges. This includes, but is not limited to, any of the following:

- Splitting of charges to avoid the single purchase dollar limit. The P-Card Contact reviews detailed transaction reports of exceptions by Cardholders. These reports list purchases that may have been split to avoid dollar control limits.
- Using another Cardholder's card to circumvent a purchase limit assigned to either Cardholder.
- The Cardholder accepts a personal gratuity from a vendor.
- Loaning the card to another employee or person.
- Allowing purchases to be signed for by anyone other than the Cardholder.
- Failure to submit receipts for charges.
- A personal purchase occurs.
- If the monthly Cardholder statement is submitted to Internal Business Services more than 10 days after the monthly statement date.
- If the attached receipts do not match the item descriptions or dollar amounts listed on the monthly statement of account.
- **Unauthorized** purchases, including the following items:
 - Items for non-District's Purposes
 - Items or Services for Personal Use
 - Any purchases prohibited by any _____ District policy
 - Cash Advances
 - Gift Cards, Bus Passes, Parking Fees
 - Fuel
 - Money Orders, Transfer Checks, Cashier's Checks
 - All personal services performed by an individual, including but not limited to presenters, lecturers, interpreters, et al.
 - Independent Contractors
 - Contracted Services including Consultants / Performance Agreements
 - Capital Outlay / Equipment over \$500
 - Furniture
 - Maintenance Service Contracts
 - Long Term Rentals
 - Extended Product Warranties
 - Cell Phones / Pagers
 - Food
 - Personal Meals
 - Alcoholic Beverages
 - Gratuities
 - Medications
 - Memberships / Subscriptions
 - Printing / Copying Services
 - Postage Services / Stamps
 - Food purchases while traveling (use _____ District travel procedures)
 - Mileage Reimbursement (use _____ District travel procedures)
 - Insurance
 - Purchases from a prohibited merchant or excluded category of goods and services
 - Student Body Purchases (ASB)

- Gifts and Non-Employee Expenses
- Entertainment
- Chemicals
- Any supply, equipment, or product for which the Purchasing Department has an awarded bid as noted in this manual.
- Travel Expenses

6.5 If reported violations warrant revocation of card privileges, the Purchasing Card Administrator will contact the Cardholder's Department Head. Information will be provided regarding exceptions to the established policy or requirements that justify the cancellation of the card. A written determination from the Department Head will be obtained and reviewed by the Program Administrator. If a determination is made that a card should be cancelled, the Cardholder will be notified that the card has been cancelled. The Cardholder must destroy the card by cutting it in half and returning both halves to the Program Administrator.

7.0 MAKING A PURCHASE WITH THE PURCHASING CARD:

7.1 Confirm that the selected merchant accepts _____. If not, choose another merchant. In either case, inform the Program Administrator, via the Department Contact, about the fact that the original merchant did not accept _____. If necessary, the Program Administrator will work with the supplier to assist him/her in enrolling in the _____ acceptance program.

7.2 When making purchases, 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 9.0, paragraph 9.1*.

7.3 When placing an order with a merchant, ask what the tax rate is and the total tax amount. Make a notation for out-of-state vendors that do not charge sales tax. These sales need to be reported by Accounts Payable to the Franchise Tax Board.

7.4 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:

- Cardholder name and phone number
- School or department name
- Delivery location – MUST be _____ District address

Ensure the merchant includes this information on all shipping documents.

7.5 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 9.0, paragraph 9.1*.

8.0 MERCHANDISE RETURNS AND EXCHANGES:

8.1 The Cardholder is responsible for contacting the merchant when merchandise purchased with the P-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. However, the Cardholder is responsible for knowing each merchant's return policy to ensure returns are timely. Documentation showing the proper resolution of the exchange is to be retained with the support documentation for that purchase.

9.0 RECORD RETENTION:

9.1 Support Documentation consists of an original merchant-produced or non-District's document that records the relevant details for each item purchased including quantities, a description of what was purchased, the total charge dollar amount and the merchant's name and address (e.g. sales receipt or original invoice,)

9.2 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 *paragraph 9.1*. If the receipts are unavailable, the Cardholder must submit a written explanation describing the transaction in detail (Purchasing Card Missing Receipt Form, *Appendix F*).

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 explanation, entitled "Lost Receipt," describing the transaction in detail (Purchasing Card Missing Receipt Form, *Appendix F*.) The Cardholder's Supervisor must review and sign the written explanation. Please note that *Section 6.0, paragraph 6.3* lists failure to turn in receipts as a reason for possible revocation of the Purchasing Card.

9.4 Receipt Not Available: For mail, phone, fax, or Internet purchases in which a receipt is unavailable use a copy of the completed application, flier, or order form as the receipt. Email 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 (See Purchasing Card Missing Receipt Form, *Appendix F*).

9.5 In all other instances, if the receipts are unavailable, the cardholder must submit a formal written, signed statement explaining and describing the transaction in detail (See Purchasing Card Missing Receipt Form, *Appendix F*). The Cardholder's Supervisor must review and sign the written explanation.

10.0 CARDHOLDER VERIFICATION OF CHARGES:

10.1 Cardholders are accountable for all charges made with their P-Cards and are responsible for checking all transactions against the corresponding support documentation to verify their accuracy and propriety.

10.2 All transactions charged to the Cardholder's card account up to the end of the monthly billing cycle will be reflected on a printed monthly bank statement. The processor sends this statement directly to the Cardholder on a monthly basis. These transactions must be verified on a monthly basis. During the cycle, Cardholders are responsible for retaining the original copy of all transaction receipts.

10.3 Cardholders are required to review their transactions, using the _____'s online transaction review system, Smart Data Online (SDOL) for accuracy, including transactions, amounts, and default account number codes. This report is available online listing all transactions

charged to the Cardholder's card account for the month. If an account number for a purchase is incorrect, the Cardholder should reallocate the default account number and replace it with any other _____ District account number that he/she is authorized to access. Once each transaction is properly reviewed and allocated, the Cardholder will check the "Cardholder Reviewed" box, which will "lock" the information into the system. The statement should be printed at the end of the monthly cycle.

10.4 If the Department Head has initialed at the account code line(s) on the Application Form, the Department Head has taken over the responsibility of assigning account numbers to transactions and the Cardholder does not need to assign account numbers to transactions. The Cardholder is still responsible for all other responsibilities in Paragraphs 10.2 and 10.3.

10.5 Original receipts (signed credit card form and cash register receipt or invoices) are required and must be stapled to the monthly statement along with any required written explanations. If a merchant provides only a credit card form, the Cardholder must attach a written explanation describing each item or service purchased. If the cash register receipt or invoice provides no detail or description of the purchase, the Cardholder must contact the merchant to obtain a copy. The monthly statement of account and attached receipts should then be forwarded to the Department Head for approval. Once the Department Head has approved the transactions, the Department Head will forward the statement and receipts to the Purchasing Card Contact in Internal Business Services within 10 days from the date on the statement.

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

10.7 Purchases will be posted to the Cardholder's department by Internal Business Services, using the account information listed on the monthly Cardholder's statement of account.

10.8 Internal Business Services will review each monthly statement and if an exception is identified, the P-Card Contact will notify the Supervisor and Cardholder for correction. The Cardholder's 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.

10.9 If a particular charge or credit does not appear online or on the Monthly Statement, it should be checked against future online transaction information and/or the next Monthly Statement. Do not remove or cross out the item on the current monthly statement or delay processing because of credits or disputes. If the charge or credit does not appear within 10 days after the original charge was made, the Cardholder must notify the P-Card Contact in Internal Business Services.

11.0 CARDHOLDER CHARGE DISPUTE RESOLUTION:

11.1 In the case of a disputed charge, the Cardholder must complete a Purchasing Card Dispute Form (*Appendix C*) within 30 days of the date noted on the Statement that lists the disputed charge and forward the completed form to the P-Card contact who will initiate the dispute through the Card Services Department.

11.2 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.

12.0 DEPARTMENT HEAD VERIFICATION OF CARDHOLDER CHARGES:

12.1 The Department Head is responsible for verifying that all charges against the Cardholder's account are authorized and approved, and that the original documentation for each Cardholder is forwarded to Internal Business Services on a monthly basis. Department Heads have the ability to allocate individual charges to appropriate _____ District general ledger account numbers. A Department Head may oversee more than one Cardholder account depending on how the department elects to manage its accounts. A department may have more than one Department Head.

12.2 The successful use of a P-Card depends on both Cardholders and Department Heads.

12.3 The Department Head must review the Cardholder's monthly statement, submitted by the Cardholder with receipts, at the end of the payment cycle and on Smart Data Online (SDOL) to ensure that the proper account numbers are charged. Review procedures include the following:

- Ensure there is adequate support documentation
- Ensure that all purchases are an appropriate use of _____ District funds.
- Ensure that the purchasing card is not used to make personal purchases.
- Ensure that only the Cardholder uses the purchasing card.
- Contact the Cardholder to address and correct any questionable purchases/procedures.
- Contact the Purchasing Card Program Administrator immediately if a noted violation requires revocation of the card.

12.4 Approve the statement only after all the above actions have been taken. By signing and approving the monthly statement, the Department Head/ Supervisor certifies the statement's compliance to the established regulations and acceptance of administrative responsibility for the financial activity.

12.5 Once approved, ensure the Cardholder's receipts are promptly forwarded to the P-Card Contact. The receipts must be received by Internal Business Services within **10** days from the date of the statement.

12.6 If a particular transaction has not been reviewed within 30 days of the statement date, a reminder will be sent to the Department Head. If after 40 days the transaction is still undesignated, a warning message will be sent, the Program Administrator will contact the Department Head, and the card may be canceled.

12.7 At the end of the fiscal year (June 30), the transactions must be reviewed and charged and settled by July 15. Employees must turn in all documentation and statements with the current year's budget codes before leaving for the summer.

12.8 If the Cardholder is absent, the Department Head must process the Cardholder's monthly statement, including the collection of all receipts, and forward to Internal Business Services. Indicate on the statement that the Cardholder was not available for review.

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

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

12.10 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. The Program Administrator must be notified, in writing, of all discrepancies.

13.0 PURCHASING CARD SECURITY:

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

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

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

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

14.0 LOST, STOLEN OR DAMAGED PURCHASING CARD:

14.1 If a Purchasing Card is lost, stolen, damaged, or if fraud is suspected, the Cardholder must notify the Mission Federal Credit Union immediately (*See Procedure 18.0*). Keep a written record of this call, which includes the date, time and name of the person contacted at Mission Federal Credit Union.

14.2 Cardholders must notify the Department Head and the Program Administrator if their cards are lost, stolen, damaged or fraud is suspected within 24 hours after reporting the incident to MFCU Card Services.

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

14.4 If a Purchasing Card is found after it has been reported lost or stolen, it must be destroyed by cutting it in half and returning both halves to the Program Administrator. The same procedure applies if a card is damaged. Both card halves must be forwarded to the Program Administrator. Use Purchasing Card Cancellation Form (*Appendix G*) to cancel the card.

14.5 Card activity is reviewed periodically and a determination can be made by the Department Head and Purchasing Card Administrator as to whether or not a card should be canceled because of lack of use.

15.0 CARDHOLDER ACCOUNT MAINTENANCE:

Whenever any of the information contained on a Purchasing Card Enrollment Form changes, a Purchasing Card Change Form (*Appendix E*) must be completed by the Cardholder within 30 days of the change and signed by the Department Head. The completed Purchasing Card Change Form must then be forwarded to the Program Administrator.

16.0 CARDHOLDER TRANSFER WITHIN THE SAN DIEGO OFFICE OF EDUCATION:

Cardholders, who transfer to a new position within the same department and require the use of a Purchasing Card as part of their new duties, must submit a completed Purchasing Card Change Form (*Appendix E*) within 15 days for authorization to continue to use the same card. Cardholders who no longer require a Purchasing Card in their new position or transfer to a different department

must return their Purchasing Card to the Program Administrator, along with a completed Purchasing Card Change Form (*Appendix E*). If it is determined that the Cardholder will need a P-Card in his/her new assignment, the Cardholder should follow the same steps described in *Section 4.0* to receive a new P-Card.

17.0 CARDHOLDER SEPARATION FROM THE DISTRICT'S:

Prior to separation from the _____ District for any reason, Cardholders must surrender their Purchasing Card and corresponding support documentation to the Program Administrator in Internal Business Services per the instructions in *Section 14.0*.

18.0 CONTACT INFORMATION:

Purchasing Card Program Administrator or P-Card Contact

Bank Information:

Lost/Stolen:

APPENDIX

SAMPLE FORMS

Purchasing Card Agreement Form - Form PC-01	A
Purchasing Card Enrollment Form (Application) - Form PC-02	B
Purchasing Card Dispute Form - Form PC-03	C
Purchasing Card Change Form - Form PC-05	D
Purchasing Card Missing Receipt Form - Form PC-06	E
Purchasing Card Cancellation Form – Form PC-07	F

**SAMPLE 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 _____ 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.
- Buyer may cancel the undelivered portion of any purchase order without cause upon written notice of cancellation to Seller. Upon receipt of notice of cancellation, Seller shall immediately stop work on the undelivered portion of the affected Purchase Order and make no further commitments for materials or services to complete such affected Purchase Order.
- All materials shall conform to the provisions set forth in Federal, State, County and City laws for their production, handling and labeling. When using Federal Funds, vendors and contractors will be required to comply with certification requirements as called for in the Code of Federal Regulations.
- 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 _____ 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 _____ 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.
- Public Works including Facility Maintenance Agreements are subject to the regulations established in SB 854 (2014) and SB 96 (2017) for Public Works Projects greater than \$25,000 and Maintenance Projects greater than \$15,000:
 - No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
 - No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 - This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 - [To be determined]: The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

WEBSITE DEVELOPMENT

As districts have moved away from brochures and are now publishing on their websites, they have greater flexibility in what can be seen by the public and vendors. There are ADA regulations for formatting web content: <https://www.w3.org/TR/WCAG21/> Regulations: [https://www.ada.gov/ada_title III.htm](https://www.ada.gov/ada_title_III.htm)

Below is a list and sample of some items that you may to consider adding:

Mission Statement:

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 _____ School District.
- 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 Make Purchases:

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 _____ 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 following are authorized to sign contracts pertaining to their departments:

The Director of Facilities is authorized to sign facility contracts.
The Director of Human Resources is authorized to sign HR contracts.
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: _____

TERMS & CONDITIONS:

Vendors are responsible for becoming familiar with all the terms and conditions of the district purchase orders. Terms and Conditions for Purchase orders are available on line at the Purchasing Department website at: _____

BIDS & RFPS

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

- \$0 - \$60,000 Informal Quotes
- \$60,001 - \$200,000 Informal Bid (registered contractors)
- \$200,001 or greater Formal Bid Process

The District will utilize piggyback bids, the cooperative agreements, or GSA schedules for purchases in excess of the current statutory bid limit or may solicit bids using the formal competitive process.

Some services are subject to the statutory bid limit.

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 ___SD 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.

OTHER

- Code of Conduct
- Link to General Bids
- Link to Construction Bids
- Link to Contractor Lists
- Link to Prequalification Application

PURCHASING RELATED WEBSITES

Contractor's License Information

California States License Board - General Webpage

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

General Information

http://www.cslb.ca.gov/Consumers/Public_Works/

License Classifications

http://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/

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

Disable Veterans Business Enterprise

Small Business & DVBE Information

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

<https://www.documents.dgs.ca.gov/pd/smallbus/resource.pdf> (2004)

Erate & Teleconnect

California Teleconnect

<https://www.cpuc.ca.gov/ctf/>

High Speed Network K12

<http://www.k12hsn.org/>

Universal Services Administrative Company

<https://www.usac.org/default.aspx>

Food Service Purchasing

California Department of Agriculture - Dairy Pricing

http://www.cdfa.ca.gov/dairy/prices_main.html

Federal Publications Search (CFRs)

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0149929155f8b56f125ecd86e8763037&mc=true&n=pt2.1.200&r=PART&ty=HTML>

School Meals Rules & Regulations - USDA

<https://www.federalregister.gov/documents/2016/07/29/2016-17227/national-school-lunch-program-and-school-breakfast-program-nutrition-standards-for-all-foods-sold-in>

USDA - Procurement Guidelines

<http://www.fns.usda.gov/farmtoschool/procuring-local-foods>

General Information

Annual Bid Limit

<http://www.cde.ca.gov/fg/ac/co/>

ASB Accounting Manual

<http://fcmat.org/wp-content/uploads/sites/4/2018/11/ASB-Manual-w-updates-11-2018-print.pdf>

Business Search (California Secretary of State)

<https://www.sos.ca.gov/business-programs/business-entities/cbs-search-tips/>

California Department of Education - Cafeteria Fund Guidance & Regulations

<http://www.cde.ca.gov/ls/nu/sn/cafefundguide.asp>

California Department of General Services – Procurement Division

<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

Ethics & Conflict of Interest

https://www.ca-ilg.org/sites/main/files/ethics_booklet_full_v4.pdf

SDCOE Commercial Warrants Claims Manual

<http://www.sdcoe.net/business-services/financial-services/commercial-warrants/Pages/commercial-warrants.aspx>

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

<https://www.sam.gov/SAM/>

Insurance

A.M. Best

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

California Insurance Company Profiles

<https://interactive.web.insurance.ca.gov/companyprofile/companyprofile>

Driver Alliant Insurance Requirement in Contracts Procedures Manual (download)

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

Legal Codes

Bill Tracker

<https://legiscan.com/CA>

California Bill Information (Register to Track Bills)

<http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

California Law

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

Fair Political Practices Commission Regulations

<http://www.fppc.ca.gov/the-law/fppc-regulations.html>

Fair Political Practices Commission Form 700

<http://www.fppc.ca.gov/forms.html>

Listserv

FCMAT - Purchasing Mailing List

<http://fcmat.org/maillinglists/>