

Business and Noninstructional Operations

CONTRACTS

The Superintendent or designee may enter into contracts on behalf of the district. To be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the Board. (Education Code 17604)

(cf. 3300 - Expenditures/Expending Authority)

(cf. 3314 - Payment for Goods and Services)

(cf. 3400 - Management of District Assets/Accounts)

All contracts between the district and outside agencies shall conform to standards required by law and shall be prepared under the direction of the Superintendent or designee.

(cf. 2121- Superintendent's Contract)

(cf. 4312.1 - Contracts)

(cf. 9124 - Attorney)

When required by law, contracts and subcontracts made by the district for construction shall contain a nondiscrimination clause prohibiting discrimination by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations to labor organizations with which they have a collective bargaining or other agreement. (Government Code 12990)

The district shall not enter into a contract that prohibits a school employee from disparaging the goods or services of the contracting party. (Education Code 35182.5)

Contracts for Non-Nutritious Foods or Beverages

Effective July 1, 2006, the district or a district school shall not enter into or renew a contract for the sale of foods that do not meet the nutritional standards specified in Education Code 49431 or 49431.2 unless the contract specifies that such sales will occur later than one-half hour after the end of the school day and/or off school premises. (Education Code 49431, 49431.2)

(cf. 3554 - Other Food Sales)

CONTRACTS (continued)

Before the district or a district school enters into or renews a contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or non-nutritious food as defined in law, the Board shall ensure that the district has sufficient internal controls in place to protect the integrity of public funds and to ensure that funds raised as a result of the contract benefit public education. (Education Code 35182.5)

The contract shall be entered into on a competitive bid basis pursuant to Public Contract Code 20111 or through the issuance of a Request for Proposal. (Education Code 35182.5)

(cf. 3311 - Bids)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

14505 Provisions required in contracts for audits

17595-17606 Contracts

35182.5 Contract prohibitions

45103.5 Contracts for management consulting service related to food service

49431-49431.5 Nutritional standards

CODE OF CIVIL PROCEDURE

685.010 Rate of interest

GOVERNMENT CODE

12990 Nondiscrimination and compliance employment programs

53260 Contract provision re maximum cash settlement

53262 Ratification of contracts with administrative officers

LABOR CODE

1775 Penalties for violations

1810-1813 Working hours

PUBLIC CONTRACT CODE

4100-4114 Subletting and subcontracting fair practices

7104 Contracts for excavations; discovery of hazardous waste

7106 Noncollusion affidavit

20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder

20104.50 Construction Progress Payments

22300 Performance retentions

UNITED STATES CODE, TITLE 20

681-1688 Title IX, discrimination

Management Resources:

SBA PUBLICATIONS

Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, rev. 2005

WEB SITES

CSBA: <http://www.csba.org>

California Association of School Business Officials: <http://www.casbo.org>

Regulation

approved: August 22, 2000

Revised: October 12, 2006

PALERMO UNION SCHOOL DISTRICT

Palermo, California

STATE ALLOCATION BOARD CONTRACTS

Disabled Veteran Business Enterprise Participation

When a lease-purchase contract or emergency portable building project contract of over \$10,000 is funded in whole or in part by state bonds, the district shall comply with disabled veteran business enterprise participation requirements established by the State Allocation Board.

Upon request, the district shall provide bidders with information to help them identify such businesses.

Bidders for contracts of over \$10,000 under California lease-purchase or emergency portable building laws shall provide certification of one of the following:

1. That at least three percent of the dollar amount of the contract will be performed by a certified disabled veteran business enterprise. Approval letter(s) from the Office of Small and Minority Business shall be included with the certification.
2. That they have made a good faith effort to comply with disabled veteran business enterprise participation requirements for such contracts. To demonstrate a good faith effort, the bidder shall submit documentation of all of the following:
 - a. Contact with the district to identify disabled veteran business enterprises
 - b. Contact with the Office of Small and Minority Business and local disabled veteran business organizations to identify disabled veteran business enterprises
 - c. Advertising published in trade papers and papers focusing on disabled veteran business enterprises
 - d. Submission of bid invitations to potential disabled veteran business enterprises
 - e. Consideration given to available disabled veteran business enterprises

Bidders are encouraged to advertise at least 14 calendar days prior to bid/proposal opening, or for as many days as possible. The only exception arises when time constraints imposed by the district prohibit the bidder from advertising; all bidders shall be notified of this exception.

STATE ALLOCATION BOARD CONTRACTS (continued)

The Superintendent or designee shall use the above documentation to evaluate bidders' efforts to seek out and consider disabled veteran business enterprises as potential subcontractors or suppliers of material or equipment. This evaluation shall be submitted for review by the Office of Public School Construction (OPSC). Bidders shall be eligible for the award of a district contract if they meet the participation goal or are found to have made a good faith effort to meet the goal.

(cf. 3311 - Bids)

Legal References:

COURT DECISIONS

Richmond v. J. A. Croson Co. (1989) 488 U.S. 469, 109 S.Ct. 706

Management Resources:

OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS

Disabled Veteran Business Enterprise Forms and Information Package

PAYMENT FOR GOODS AND SERVICES

The Governing Board desires to have invoices paid on time in order that the district may take advantage of available discounts and avoid finance charges. The district shall not be responsible for unauthorized purchases.

(cf. 3300 - Expenditures/Expending Authority)

(cf. 3312 - Contracts)

(cf. 3314.2 - Revolving Funds)

(cf. 3400 - Management of District Assets/Accounts)

The Superintendent or designee may pay invoices in excess of previously approved purchase order amounts without further Board approval when the excess amount represents sales tax, transportation charges or charges made for the detention of a shipment during loading or unloading.

Legal Reference:

EDUCATION CODE

42630-42651 General provisions - orders, requisitions and warrants

42800-42806 Revolving cash fund

42810 Alternative revolving fund

42820 Prepayment funds

CODE OF CIVIL PROCEDURE

685.010 Rate of interest

GOVERNMENT CODE

5500 Definitions (facsimile signatures)

5501 Filing and certification of manual signature

5503 Unlawful use of facsimile signatures or seals

PUBLIC CONTRACT CODE

7107 Retention proceeds; withholding; disbursement

20104.50 Construction progress payments

PAYMENT FOR GOODS AND SERVICES

Payments Related to Construction

The Superintendent or designee shall ensure that requests for progress payments related to construction contracts are processed and paid within 30 days. Any improper request shall be returned to the contractor within seven days, together with a written statement of why the request is not proper. (Public Contract Code 20104.50)

Retention proceeds withheld by the district from payments to contractors for construction shall be released within 60 days after the construction or improvement is completed. In the event of a dispute between the district and the contractor, the district may withhold from the final payment an amount not to exceed 150% of the disputed amount. (Public Contract Code 7107)

REVOLVING FUNDS

District Revolving Fund

The Governing Board has established by resolution a revolving cash fund for use by the Superintendent or designee in paying for goods, services and other charges determined by the Board, including supplemental payments required to correct any payroll errors. (Education Code 42800-42806, 45167)

At the request of the Board, County Auditor or County Superintendent of Schools, the Superintendent or designee shall give an account of the fund. (Education Code 42804)

The funds shall be deposited in a bank doing business locally, whose deposits are insured by FDIC. The Superintendent or designee shall be responsible for all payments into the account as well as expenditures from the account subject to the restrictions established by the Board.

The Board shall review and revise fund usage as appropriate.

(cf. 3400 - Management of District Assets/Accounts)

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

41020 Audits of all district funds

42238 Local taxation by school districts

42800-42806 Revolving cash fund

42810 Revolving cash funds; use; administrators

45167 Error in salary

RELATIONS WITH VENDORS

No district employee or Governing Board member shall accept personal gifts, commissions or expense-paid trips from individuals or companies selling equipment, materials or services required in the operation of district programs. Gifts include any gift purchased specifically for an employee which is not generally offered to other buyers.

This policy does not prohibit employees from accepting promotional or advertising items such as calendars, desk pads, notebooks and other office gadgets which are offered by business concerns free to all as part of their public relations programs.

District employees who work for or serve as consultants for potential vendors shall not participate in evaluating any equipment, materials or services of that vendor or its competitors.

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 9270 - Conflict of Interest)

This policy does not prohibit the acceptance of materials and/or services which are of use and benefit to the district.

(cf. 3290 - Gifts, Grants and Bequests)

Legal Reference:

EDUCATION CODE

60071 Prohibited offers to influence adoption or purchase of instructional materials

60072 Acceptance of consideration or inducements by school official

60073 Penalties for violation of article

60074 Supplying sample copies

60075 Receiving sample copies

60076 Inapplicability of article; royalties or other compensation of school official for writing or preparing instructional materials; claim of district to royalty

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Any and all claims for money or damages against the district must be presented to and acted upon in accordance with Governing Board policy and administrative regulation. Compliance with district procedures is a prerequisite to any court action, unless the claim is governed by statutes or regulations which expressly free the claimant from the obligation to comply with this policy and the claims procedures set forth in the Government Code.

This policy is intended to apply retroactively to any existing causes of action and/or claims for money and/or damages.

Legal Reference:

EDUCATION CODE

35200 *Liability for debts and contracts*

35202 *Claims against districts; applicability of Government Code*

GOVERNMENT CODE

800 *Cost in civil actions*

810-996.6 *Claims and actions against public entities*

53051 *Information filed with secretary of state and county clerk*

COURT DECISIONS

CSEA v. Azusa Unified School District, (1984) 152 Cal.App.3d 580

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Time Limitations

1. Claims for money or damages relating to a cause of action for death or for injury to person, personal property or growing crops shall be presented to the Governing Board no later than six months after the accrual of the cause of action. (Government Code 905, 911.2)
2. Claims for money or damages as authorized in Government Code 905 and not included in paragraph #1 above shall be filed not later than one year after the accrual of the cause of action. (Government Code 905, 911.2)
3. Claims for money or damages specifically excepted from Government Code 905 shall be filed not later than six months after the accrual of the cause of action. (Government Code 905, 911.2, 935)

Late Claims

Claims under paragraphs #1 and #3 above which are filed later than six months after the accrual of the cause of action must be accompanied by an application to file a late claim. Such claim and application to file a late claim must be filed not later than one year after the accrual of the cause of action.

If a claim under paragraphs #1 or #3 is filed late and is not accompanied by the application, the Board or Superintendent shall, within 45 days, give written notice that the claim was not filed timely and that it is being returned without further action. The notice shall be in the form set forth in Exhibit A.

The application to file a late claim shall state the reason for the delay. The Board shall grant or deny the application within 45 days after it is presented. By mutual agreement of the claimant and the Board, this 45-day period may be extended by written agreement made before the expiration of such period. If the Board does not take action on the application within 45 days, it shall be deemed to have been denied on the 45th day unless such time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement.

If the application to present a late claim is denied, the claimant shall be given notice in the form set forth in Exhibit B. (Government Code 911.3, 911.4, 911.6, 911.8, 912.2, 935)

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Delivery and Form of Claim

A claim, any amendment thereto, or an application for leave to present a late claim shall be deemed presented when delivered to the office of the Superintendent or deposited in a post office, subpost office, substation, or mail chute or other like facility maintained by the U.S. Government in a sealed envelope properly addressed to the district office with postage paid. (Government Code 915, 915.2)

Claims may be submitted on the district claim form or as prescribed in Section 910 and 910.2 of the Government Code. (Government Code 910, 910.2, 910.4)

Notice of Claim Insufficiency

The Superintendent shall review all claims for sufficiency of information. The Superintendent or designee may, within 20 days of receipt of claim, either personally deliver or mail to claimant a notice as set forth in Exhibit C stating deficiencies in the claim presented. If such notice is delivered or sent to claimant, the Board shall not act upon the claim until at least 15 days after such notice is sent. (Government Code 910.8, 915.4)

Amendments to Claim

Claims may be amended within the above time limits or prior to final action by the Board, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim.

Action on Claim

Within 45 days after the presentation or amendment of a claim, the Board (or Superintendent, if delegated this authority) shall take action on the claim. (Government Code 912.4) This time limit may be extended by written agreement before the expiration of the 45-day period or before legal action is commenced or barred by legal limitations. (Government Code 912.4) The Superintendent shall transmit to the claimant a notice of action taken. The notice shall be in the form set forth in Exhibit D. (Government Code 913)

If no action is taken within the prescribed time limits, the claim shall be deemed to have been rejected and the claimant notified in accordance with Government Code 913. (Government Code 945.6)

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Roster of Public Agencies

The Superintendent shall annually verify that all information regarding the school district and the Board is filed accurately with the Roster of Public Agencies in the office of the Secretary of State and the County Clerk. The verified information shall include the name of the school district, the mailing address of the Board, and the names and addresses of the Board presiding officer, the Board clerk or secretary and other members of the Board. (Government Code 53051)

S A M P L E

Exhibit A

NOTICE OF FAILURE TO FILE IN A TIMELY MANNER

TO: [Claimant]
[Address]

RE: Claim Filed [insert date]

The claim you presented to the Superintendent on _____ is being returned because it was not presented within six months after the event or occurrence as required by law. See Government Code 901, 911.2 and 935. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to the district for leave to present a late claim. See Sections 911.4 through 912.2 and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Government Code 911.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

S A M P L E

EXHIBIT B

WARNING

IF YOU WISH TO FILE A COURT ACTION ON THIS MATTER, YOU MUST FIRST PETITION THE APPROPRIATE COURT FOR AN ORDER RELIEVING YOU FROM THE PROVISIONS OF GOVERNMENT CODE 945.4 (CLAIMS PRESENTATION REQUIREMENT). SEE GOVERNMENT CODE 945.6. SUCH PETITION MUST BE FILED WITH THE COURT WITHIN SIX MONTHS FROM THE DATE YOUR APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM WAS DENIED.

YOU MAY SEEK THE ADVICE OF AN ATTORNEY OF YOUR CHOICE IN CONNECTION WITH THIS MATTER. IF YOU DESIRE TO CONSULT AN ATTORNEY, YOU SHOULD DO SO IMMEDIATELY.

S A M P L E

EXHIBIT C

NOTICE OF INSUFFICIENCY

Dear _____:

Please notice that the claim presented by you on Date fails to comply substantially with the requirements of Government Code Sections 910 and 910.2 (or with the requirements of Section 910.4, if a claim is presented on a general claim form provided by the State Board of Control.) Specifically, your claim is insufficient because of the following defects or omissions:

Therefore, the claim is being return to you without further action or consideration. If you wish to pursue this further, you should consult the California Government Code or legal counsel.

The Board will not take any action on the claim for a period of 15 days from the date of this notice.

Dated: _____

Signature

Typed Title of Officer)

