

CONTRACTS

Whenever state law invests the Governing Board with the power to enter into contracts on behalf of the district, the Board may, by a majority vote, delegate this power to the Superintendent or designee. 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 and Purchases)
(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 public works or for goods or services 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)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

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, 2007, 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)

In accordance with the dates specified in law, the district or a district school shall not enter into or renew a contract for the sale of beverages that do not meet the nutritional standards in Education Code 49431.5 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.

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 Superintendent or designee shall develop the district's internal control procedures to protect the integrity of public funds. Such internal controls may include but not be limited to the following:

1. Control procedures that produce accurate and reliable financial statements and, at the same time, safeguard the assets, financial resources, and integrity of every employee responsible for handling money or property. Control systems shall be systematically evaluated and revised to keep pace with the changing responsibilities of management.

(cf. 3100 - Budget)

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

(cf. 3460 - Financial Reports and Accountability)

2. Procedures to ensure that district personnel do not handle cash or product at the school site. The contract shall specify that the vendor stock the machines and shall provide cash accounting, along with a check, for district proceeds directly to the control office.

In addition, the contract may specify whether contractor logos are permitted on district facilities, including but not limited to scoreboards and other equipment. If such logos are permitted, the contractor shall present the equipment to the Board as a gift. The gift may be accepted by the Board in accordance with Board policy and administrative regulation.

(cf. 3290 - Gifts, Grants and Bequest)

To ensure that funds raised by the contract benefit district schools and students:

1. The Superintendent or designee may involve parents/guardians, students, staff, and interested community members to make recommendations regarding the contract, including recommendations as to how the funds will be spent in a manner that benefits public education.

(cf. 1220 - Citizen Advisory Committees)

2. Prior to ratifying the contract, the Board shall designate the specific programs and activities that will be funded by the proceeds of the contract and consider how the contract reflects the district's vision and goals.

CONTRACTS (continued)

(cf. 0000 - Vision)

(cf. 0100 - Philosophy)

(cf. 0200 - Goals for the School District)

3. The contract shall specify that the contractor report, on a quarterly basis, to the Superintendent or designee the number of food items or beverages sold within the district and the amount of money raised by the sales.
4. The Superintendent or designee shall ensure that the contract does not limit the ability of student and parent organizations to plan and operate fund-raising activities.

(cf. 1230 - School-Connected Organizations)

(cf. 1321 - Solicitation of Funds from and by Students)

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)

The Board shall not enter into or renew a contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or non-nutritious food until parents/guardians, students, and members of the public have had an opportunity to comment on the contract at a public hearing held during a regularly scheduled board meeting or as otherwise authorized by Education Code 35182.5. The Board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting. (Education Code 35182.5)

(cf. 9322 - Agendas/Meeting Materials)

(cf. 9323 - Meeting Conduct)

The public hearing shall include but not be limited to a discussion of the nutritional value of food and beverages sold within the district; the availability of fresh fruit, vegetables, and grains in school meals and snacks, including locally grown and organic produce; the amount of fat, sugar, and additives in the food and beverages discussed; and barriers to student participation in school breakfast and lunch programs. (Education 35182.5)

(cf. 5030 - Student Wellness)

The contract shall be accessible to the public and may not include a confidentiality clause that would prevent the district or a district school from making any part of the contract public. (Education Code 35182.5)

(cf. 1340 - Access to District Records)

CONTRACTS (continued)

Contracts for Electronic Products or Services

The Board shall not enter into a contract for electronic products or services that requires the dissemination of advertising to students, unless the Board: (Education Code 35182.5)

1. Enters into the contract at a noticed, public hearing of the Board.

(cf. 9320 - Meetings and Notices)

2. Makes a finding that the electronic product or service is or would be an integral component of the education of students.

(cf. 0440 - District Technology Plan)

3. Makes a finding that the district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to students.

(cf. 1325 - Advertising and Promotion)

4. As part of the district's normal, ongoing communication to parents/guardians, provides written notice that the advertising will be used in the classroom or other learning center.

5. Offers parents/guardians the opportunity to request in writing that their child not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents/guardians at any time.

Legal Reference: (see next page)

CONTRACTS (continued)

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

1681-1688 *Title IX, discrimination*

Management Resources:

CSBA 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>