

NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT

Procurement Code of Conduct

Based on
Board Policy 3312
Business and Non-Instructional Operations
and
CDE Nutrition Services Division
Management Bulletin CNP-01-2015

Procurement Code of Conduct

The Business Services Department maintains files on North Monterey County Unified School District (District) contracts. A contract, in its broadest sense encompasses all services, materials, and supplies used to operate a school or department. Such services include those of architects and engineers, professional services, construction contracts, and other types used for operations and instructional activities. Contracts also include the purchase of bid and non-bid items for materials, supplies, and equipment, including the construction of schools and other facilities.

All work or services to be performed, supplies and equipment to be ordered, regardless of the dollar value, require a contract to be approved prior to the start, performance or order date. The authority to sign a contract has been delegated by the Board of Trustees to the Superintendent and Assistant Superintendent, Business Services. School sites and departments will submit the initial paperwork to the Business Services Division for review and approval according to the guidelines found in the District's Procurement Manual.

This Procurement Code of Conduct applies to funding provided from federal, state and local sources to be utilized in the School Nutrition Program and for all federal, state and local programs of the District.

In accordance with the general procurement standards in Title 2, Code of Federal Regulations (2 CFR), Section 200.318(c), each District must develop and maintain written standards of conduct to cover potential personal and organizational conflicts of interest. These written standards must govern the actions of District employees, officers, or agents who engage in the selection, award, and administration of contracts funded by federal, state, and local awards.

Any person employed by the District who purchases goods and services, or is involved in the purchasing process for the District, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;

2. Diligently follow all lawful instructions while using professional judgement, reasonable care, and exercising only the authority granted;
3. Conduct all purchasing activities in accordance with the laws, while remaining alert to and advising the District regarding the legal ramifications of the purchasing decisions;
4. Refrain from any private or professional activity that would create a conflict between personal interest and the interest of the District;
5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;
6. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors or services from present or potential suppliers which might influence or appear to influence purchasing decisions (for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value, \$25 or less, the gift may be acceptable);
7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
8. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;
9. Provide an environment where all business concerns, large or small, majority- or minority-owned, are afforded an equal opportunity to compete for the District's business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.

Procurement Standards

All procurement transactions must be conducted in a manner that allows full and open competition consistent with the standards stated in 2 CFR, Section 200.319. To ensure objective vendor performance and eliminate any unfair competitive advantage, vendors that develop or draft specifications, requirements, statements of work, invitations for bid (IFB), or requests for proposal (RFP) must be excluded from competing for the bid (2 CFR, Section 200.319[a]).

Actions that restrict competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Conducting noncompetitive pricing practices between firms or between affiliated companies
- Awarding noncompetitive contracts to consultants who are on retainer contracts
- Allowing organizational conflicts of interest
- Specifying a brand name product instead of allowing an equal product to be offered by describing product performance or other relevant requirements

- Engaging in any arbitrary action during the procurement process, such as awarding a contract without a valid reason to a vendor that did not rank first (or lowest in price) according to the District's evaluation criteria when awarding a contract.

Incentives

Incentives that may serve to induce or influence an employee engaged in the selection, award, or administration of contracts may be unlawful. Examples of incentives include, but are not limited to:

- Extra goods or services that were not solicited
- Gifts (such as free merchandise, event tickets, gift cards)
- Money for scholarships
- Cash
- Points that can be redeemed for merchandise

To avoid noncompliance with federal procurement regulations (including, but not limited to, 2 CFR sections 200.318, 200.319, and 400.2) and to prevent bid protests, the District's written Code of Conduct prohibits District staff from accepting any incentives offered by a bidder for any District staff member's personal use.

Incentives solicited by the District in its RFP or IFB may be allowable if the incentive or related item benefits District operations. If there is a question about the incentive meeting this requirement, consider removing the incentive. The CDE can help assess allowability; however, compliance is ultimately the District's responsibility.

When requesting incentives, Districts must keep in mind that:

- All responsive bids or proposals, including those without the requested incentives, must be evaluated
- All requested incentives must exclusively and directly benefit the District; incentives that are retained by the District for non-program use, or given to employees or students as a reward for an accomplishment, are not allowed
- Soliciting incentives must not create a barrier to full and open competition
- Eliminating bidders based on the provision of incentives or points programs limits full and open competition by placing unreasonable requirements on those bidders that are unable or unwilling to provide such incentives
- Requesting incentives may reduce the pool of bidders
- Unless all bidders can offer the solicited incentives, the District may not score the solicited item as part of the evaluation criteria

- Bids and proposals that include **unsolicited** incentives are considered overly responsive and the District may be required to disqualify overly responsive bids, especially if it causes a material change to the RFP

Consequences

Pursuant to Title 7, Code of Federal Regulations, Section 210.19(a)(4), the CDE is required to investigate complaints received or irregularities noted in connection to the operation of the food service program or any other federal/state program. This requirement extends to the performance of individuals and organizations engaged in contract solicitation, award, and administration. The CDE's oversight and monitoring of District procurement activities includes a review of the District's written Code of Conduct and, when necessary, investigations of reported real or apparent conflicts of interest. If a CDE investigation reveals that a District violated their Code of Conduct, the CDE will issue a finding of noncompliance and require the District to take corrective action. Consequences for failure to comply with federal regulations are outlined in 2 CFR, sections 200.338 (Remedies for Noncompliance) and 200.339 (Termination), and may include temporary withholding of cash payments, suspension of program funding, denial of all or part of the cost of the noncompliant activity, other remedies to bring the District into compliance, and termination.

The District shall be familiar with federal, state, and local laws regarding the misuse of public funds that could lead to other consequences, including civil or criminal penalties, lawsuits, and bid protests that may also result in public mistrust. The District shall be responsible for ensuring that its procurements and contracts comply with all applicable laws, program instructions, and guidance materials, and should consult its legal counsel regarding any proposed procurement methods or contract language.

Conflicts of Interest

A conflict of interest arises when the District's employee, officer, agent, or any member of their immediate family, a partner, or an organization that employs or is about to employ any immediate family member, has a financial or other interest in—or would gain a tangible personal benefit from—a firm considered for a contract.

Nonfederal entities with a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest include relationships with a parent, affiliate, or subsidiary organization, and where the nonfederal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization (2 CFR, Section 200.318[c][2]).

Pursuant to 2 CFR, Section 400.2(b), agencies must disclose any potential conflicts of interest in writing to the California Department of Education (CDE).

California Government Code, Section 87100, states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Public officials at every level of state and local government must disclose reportable investments, business positions, interests in real property, and income (financial interests). The District has adopted a conflict of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make. A financial interest is reportable under a conflict of interest code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected by any decision made or participated in by the public official. (California Government Code sections 87301 and 87302).

For more information, please visit the California Fair Political Practices Commission Web site at <http://www.fppc.ca.gov/>.

Forms of Contracts:

The Governing Board recognizes its responsibility to enter into contracts on behalf of the District for the acquisition of equipment, supplies, services, and other resources necessary for the achievement of District goals. In exercising this authority to enter into a contract, the Board shall ensure that the District's interest is protected and that the terms of the contract conform to applicable legal standards, including the bidding requirements in Public Contract Code 20111. The Board may, by a majority vote, delegate to the Superintendent or designee the authority to enter into contracts on behalf of the District. To be valid or to constitute an enforceable obligation against the District, all such contracts must be approved and/or ratified by the Board. Every contract entered into on behalf of the District shall be made available for public inspection, except when the law prohibits disclosure. No contract shall prohibit a District employee from disparaging the goods or services of any contracting party.

Purchase Order

The Purchase Order is the most common form of contract document utilized by the District and is generally used to purchase all materials, equipment, and supplies that do not require a formal competitive bidding process. Once the vendor has accepted the Purchase Order, a valid contract exists to provide the materials, equipment or supplies requested. The authority to sign Purchase Orders has been delegated to the Superintendent and the Assistant Superintendent, Business Services.

No school site or department will be allowed to initiate an order with a vendor or to indicate to the vendor that a Purchase Order will be forthcoming, so as to obligate District funds without the required approvals.

It is the practice of the District to utilize the Purchase Order in lieu of signing vendor copies of maintenance agreements, licensing agreements, and other service contracts. The District shall advertise for competitive bids to let any public works project contract involving expenditures in excess of the current bid limit. Public Works Project means construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a District-owned, leased, or operated facility no matter the source of funding to the Board of Trustees for approval and ratification within 60 days of entering into the contract at the next available board meeting.

Competitive Bid

When a projected expenditure for materials, goods, equipment, and services not classified as public works project contracts exceeds the formal bid limits prescribed by Public Contract Code 20111 for materials or services, a formal competitive bidding process is required.

Formal competitive bids require advertising an invitation for bids in a newspaper on behalf of the District for the performance of labor and furnishing of materials or supplies. Publication will be made once per week for a two-week period designating the time and place for bid submission.

Once the bid has been awarded by the Board of Trustees, the standard agreement will be signed and the terms of the bid become the contract. A Purchase Order will be issued encumbering the funds against the District budget after award by the Board of Trustees.

Public Works Contracts

Public Works contracts for new construction over \$25,000 and for maintenance over \$15,000 require the contractor to register with the Department of Industrial Relations (DIR). Public Works projects are defined per Public Contract Code 22002 as follows:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any publicly owned, leased or operated facility
2. Painting or repainting of any publicly owned, leased or operated facility

Public Works contracts will be completed by the contractor and submitted by the requesting site/department along with the purchase requisition and required certificates of insurance. Specialty contractor contracts will be approved up to the formal bid limit through the purchase order approval process.

The Business Services Division is responsible for verifying the validity of the contractor's licenses with the State Contractors Licensing Board and to make sure that all contractors performing work are registered with the Department of Industrial Relations.

State Allocation Board Contracts

The Superintendent or designee shall ensure that the District complies with disabled veteran business enterprise (DVBE) participation goals of three percent for State Allocation Board funded projects over \$10,000 in the Lease-Purchase program and certain contracts (architectural, on-site inspections and utility hookups) over \$10,000 in the State Relocatable Classroom Program.

For projects requiring DVBE participation goals, bidders will provide to the District certification that the bidder has satisfied the three percent participation goal for DVBEs. If the bidder(s) is (are) unable to meet the three percent participation goal, the District shall evaluate the effort made by the bidder to seek out and consider DVBEs as potential subcontractors or suppliers of documentation as prescribed by District standards. 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.

Architectural, Engineering, Environmental, Construction Management, et al Contracts

Government Code 4525-4529.5 requires Districts to select professional services for architectural, engineering, environmental, construction management, land surveying on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Districts are to solicit requests for proposals from at least three qualified firms. The District may select any of the firms best able to meet the criteria established by the District.

Contracts for Digital Storage and Maintenance of Student

The District may enter into or renew a contract with a third party for the purpose of providing services, including cloud-based services, for the digital storage, management, and retrieval of student records and/or to provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use student records. For these purposes, student records include any information maintained by the District that is directly related to a student and information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other District employee, and do not include de-identified information (Education Code 49073.1).

Any such contract shall contain all of the following: (Education Code [49073.1](#))

1. A statement that student records continue to be the property of and under the control of the District
2. If applicable, a description of the means by which students may retain possession and control of their own student-generated content, as defined in Education Code [49073.1](#), including options by which a student may transfer student-generated content to a personal account

3. A prohibition against the third party using any information in the student record for any purpose other than those required or specifically permitted by the contract
4. A description of the procedures by which a parent/guardian or a student age 18 years or older may review personally identifiable information in the student's records and correct erroneous information
5. 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 student records
6. A description of the procedures for notifying the affected parent/guardian, or the affected student if age 18 years or older, in the event of an unauthorized disclosure of the student's records
7. A certification that a student'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, except that these requirements shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content
8. A description of how the District and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act, 20 USC [1232g](#)
9. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising

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 (Education Code 35182.5), unless the Board:

1. Enters into the contract at a noticed, public hearing of the Board.
2. Makes a finding that the electronic product or service is or would be an integral component of the education of students.
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.
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. A 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.

Contracts for Non-Nutritious Foods or Beverages

The District shall not enter into or renew a contract for the sale of foods or beverages that do not meet applicable nutritional standards specified in Education Code 49431-49431.7, 5 CCR 15500-15501 or 15575-15578, or 7 CFR 210.11 or 220.12, unless the contract specifies that such sale will occur off campus or outside the time restriction specified in the applicable law.

Before the District enters into or renews a contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or non-nutritious foods 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. 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.
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.

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

1. The Superintendent or designee may invite 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.
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.
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. The Superintendent or designee shall report these amounts to the Board on a regular basis.
4. The Superintendent or designee shall ensure that the contract does not limit the ability of student and parent organizations to plan and operate fundraising activities.

Any contract for the sale or advertisement of non-nutritious foods or carbonated or non-nutritious beverages 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.)

The Board shall not enter into or renew any contract that grants exclusive or nonexclusive advertising or sale of carbonated beverages, non-nutritious beverages, or non-nutritious foods 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. 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.) The public hearing shall include, but not be limited to, a discussion of the nutritional value of foods 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 foods and beverages discussed; and barriers to student participation in school breakfast and lunch programs. (Education Code 35182.5.) 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.)

Contracts for Personal Services

In order to achieve cost savings, the District may enter into or renew a contract for any personal service that is currently or customarily performed by classified employees, if the contract does not displace school district employees and meets other conditions specified in Education Code 45103.1. To enter into or renew such a contract, the Board shall ensure that the District meets the numerous conditions specified in Education Code 45103.1. In addition, the District may enter into or renew any contract for personal service without meeting the conditions described above, if any of the following conditions exists: (Education Code 45103.1)

1. The contract is for new District functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
2. The services contracted are not available within the District, cannot be performed satisfactorily by District employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the District.
3. The services are incidental to a contract for the purchase or lease of real or personal property, including, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
4. The District's policy, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary district hiring process.
5. The nature of the work is such that the criteria for emergency appointments, as defined in Education Code 45103.1, apply.
6. The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the District in the location where the services are to be performed.

7. The services are of such an urgent, temporary, or occasional nature that the delay that would result from using the District's regular or ordinary hiring process would frustrate their very purpose.

Fingerprint Clearance

Pursuant to Education Code 45125.1, all firms and individuals providing services to District school sites that interact with students will certify to the District that employees of the firms and individuals have been cleared by the Department of Justice of all serious crimes as outlined in the Code. Certification of fingerprinting clearance will be maintained in the Business Services Division office with the contract and must be on file prior to any performance under the contract.

Approvals

All contracts exceeding \$5,000 will be presented to the Board of Trustees for approval on the consent calendar, and contracts exceeding \$15,000 will be presented to the Board as a formal board action item, prior to the start of work except for Public Works Contracts which shall be approved up to the legal bid limit through a formal board action item. All contracts with multiple year financial commitments regardless of dollar value will be presented to the Board of Trustees for approval.

Revisions/Change Orders

Revisions to contracts or purchase orders exceeding 10% of the originally approved expenditure shall be provided to the Board of Trustees for approval/ratification through a formal board action item. All revisions to contracts or purchase orders will be processed through the Business Services Division.

Revisions to construction/public works contracts may not exceed 10% of the awarded contract or the legal bid limit for public works projects, whichever is greater. Due to the nature of construction/public works activities and to keep the public work activities on schedule, the Board of Trustees has authorized the Superintendent or designee to negotiate any single change order up to 3% of the awarded contract with ratification by the Board of Trustees within sixty (60) days of the change order. Any change orders for construction/public works contracts exceeding 10% will require competitive bids.

Negotiations for change orders for public works projects, contracts, and purchase orders will be handled by the Assistant Superintendent, Business Services. All change orders will be specified in writing and signed off by both the District and the Contractor prior to approval/ratification by the Board of Trustees.