

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent of Schools

October 29, 2008

To: Vincent Matthews, State Administrator & Board of Education

From: Roberta Mayor, Interim Superintendent
Deborah Cooksey, Interim General Counsel
Edgar Rakestraw, Jr., Secretary, Board of Education

Subj: Amendment of Board Policy –BP 3312 – Business and Noninstrutional Operations
Contracts and Delegation of Authority

ACTION REQUESTED

Joint approval by the State Administrator and the Board of Education, as the Governing Board, in their respective areas of operation, delegating to the Superintendent of Schools, the General Counsel, the Secretary of the Board, in their respective area of responsibility, the authority to enter into and execute a Contract, Contracts or Amendments, on behalf of the District, with any one vendor each fiscal year for a cumulative value stated in Section 20111 of the Public Contract Code, adjusted annually for inflation, without the matter having to first come to the Board. All such contracts, however, will come to the Governing Board for ratification within 30 days of execution by the authorized party.

BACKGROUND

The recent administrative change in contracting procedures within the District may have unintentionally delayed or caused a bottle neck in the initiation of certain programs, at school sites and elsewhere, pending ultimate legal contract approval by the Governing Board.

To alleviate or reduce the likelihood of such a bottle neck recurring, while concurrently requiring managers to more timely plan and submit contracts for appropriate approval , holding managers accountable for timely programs implementation and providing an opportunity for the Governing Board to exercise its fiduciary and oversight responsibility of ultimate approval of all contracts in the District, we are recommending that the District codify its past operational practice, as permitted under the Education and Public Contract Codes, by delegating to the parties named the ability to initially approve and execute a contract, or contracts or amendments with any one vendor in a fiscal year of a cumulative value not to exceed, currently \$72,400.00, the sum referenced in section 20111 of the Public Contract Code, adjusted annually for inflation, without the matter first going to Board. The wording in blue and red reflects the proposed amendment of the current policy.

If adopted, the proposed Amended Policy will reaffirm, as required by law, the standards and safeguards stated therein and for the Board ultimately to ratify (or not) all such contracts approved by the parties under the delegated authority enumerated in proposed Amended Board Policy 3312. The Governing

Board, because of the urgency of the issue, as stated herein, is requested to approve the amended policy upon first reading.

FISCAL IMPACT

Adoption of this policy has no additional fiscal impact. Any contract initially approved by the Superintendent under the delegated authority must have funding available in the fiscal year approved budget and must meet the form and content standards approved by the General Counsel.

RECOMMENDATION

The Parties recommends the Governing Board immediately approve Amended Board Policy 3312 – Contracts and Delegation of Authority, attached hereto. The proposed revision of the policy has been reviewed and approved by the General Counsel.

RM:ER: st

Attachment: Proposed Amended Board Policy 3312

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 3312

Business and ~~Noninstructional~~Noninstructional Operations

-Contracts and Delegation of Authority

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 ~~others, the Superintendent or Associate Superintendent of Business.~~ 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)

The Governing Board hereby delegates to the Superintendent of Schools, the General Counsel, and the Secretary of the Board, in their respective areas of responsibility, the authority to enter into and execute a contract or contracts or amendments thereto with any one vendor in a fiscal year for an amount or amounts cumulative not to exceed the sum, adjusted annually for inflation, as stated in section 20111 of the Public Contract Code¹. Any and all contracts or contract amendments for amounts in excess of the cumulative total with a vendor in a fiscal year shall first be presented to the Governing Board for approval. (Education Code 17605)

The ~~Sueprintendent~~Superintendent, the General Counsel and the Secretary of the Board shall present to the Governing Board for ratification within 30 calendar days any and all contracts or amendments entered and executed by ~~Superitnendent~~Superintendent under the delegated authority, as required by law, stated in the ~~forementioned~~forementioned paragraph(s). The Secretary of the Board shall certify any and all ratifications thereafter.

(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, as to form and content, -under the direction of the ~~Superintendent or Associate Superintendent of Business.~~General Counsel.

(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)

¹ The current Fiscal Year calculation based on the referenced code section is \$72,400.00.

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

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 this contract benefit public education. (Education Code 35182.5)

The Superintendent ~~or Deputy Superintendent of Business Services~~ 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 Oakland Unified School District Board Policy and Oakland Unified School District 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 Deputy Superintendent of Business Services~~ may form a committee consisting of 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.

(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. The Superintendent ~~or Deputy Superintendent of Business Services~~ shall report these amounts to the Board on a regular basis.

4. The Superintendent ~~or Deputy Superintendent of Business Services~~ 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)
(cf. 3554 - Other Food Sales)

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. 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 Board may satisfy the public hearing requirement by either: (Education Code 35182.5)

1. Reviewing the contract at a public hearing of the Child Nutrition and Physical Activity Advisory Committee established pursuant to Education Code 49433

2. Holding an annual public hearing to review and discuss existing and potential contracts for food and beverage sales on campuses, including food and beverages sold as a full meal, through competitive sales and through vending machines

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)

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 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)

(cf. 6162.7 - Use of Technology in Instruction)

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:

EDUCATION CODE

~~200-262.4 Prohibition~~262.4 Prohibition of discrimination on the basis of sex

~~14505 Provisions~~14505 Provisions required in contracts for audits

17595-17606 Contracts

35182.5 Contract prohibitions

~~45103.5 Contracts~~45103.5 Contracts for management consulting service related to food service

CODE OF CIVIL PROCEDURE

~~685.010 Rate~~685.010 Rate of interest

GOVERNMENT CODE

~~12990 Nondiscrimination~~12990 Nondiscrimination and compliance employment programs

53260 Contract provision re maximum cash settlement

~~53262 Ratification~~53262 Ratification of contracts with administrative officers

LABOR CODE

~~1775 Penalties~~1775 Penalties for violations

1810-~~1813 Working~~1813 Working hours

PUBLIC CONTRACT CODE

4100-~~4114 Subletting~~4114 Subletting and subcontracting fair practices

~~7104 Contracts~~7104 Contracts for excavations; discovery of hazardous waste

~~7106-7106 Noncollusion~~No collusion affidavit

20111 Contracts over \$59,600; contracts for construction; award to lowest responsible bidder

20104.50 Construction Progress Payments

22300 Performance retentions

UNITED STATES CODE, TITLE 20

| 1681-~~1688~~ ~~Title~~1688 ~~Title~~ IX, discrimination

Management Resources:

CSBA PUBLICATIONS

Healthy Food Policy Resource Guide, 2003

WEB SITES

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

CASBO: <http://www.casbo.org>

| 7/14/04; 10/29/08A