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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date February 12, 2014

Subject **BP 3312 – CONTRACTS AND DELEGATION OF AUTHORITY**

Action Requested Approval of modification in Board Policy 3312 to conform to District organizational changes and certain clean-up changes.

Background Approval of modification in Board Policy 3312 to conform to District organizational changes and certain clean-up changes.

Discussion The changes being proposed 1) conform delegated authority to the Board's organizational changes effective July 1, 2013; 2) provide contracts must be submitted for ratification in 60 days; 3) prohibits the use of district funds to purchase alcoholic beverages; and 4) minor deletions to conform to law.

Recommendation Approval by the Board of Education of the recommended changes in BP 3312.

Fiscal Impact N/A

Attachments • Redlined Copy of Board Policy 3312

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 3312

Business and 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. 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, ~~and~~ 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 Code. The Governing Board hereby delegates to the Deputy Superintendent, Business and Operations, the Deputy Superintendent, Instruction, Leadership and Equity-in-Action, and the Assistant Superintendent, Facilities, 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 \$50,000 per year. The Superintendent may execute on behalf of the District any contract or contract amendment in excess of \$50,000 per year up to the amount or amounts cumulative not to exceed the sum, adjusted annually for inflation, as stated in section 20111 of the Public Contract Code. 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)

All contracts or amendments entered and executed under the delegated authority, as required by law,) shall be submitted to the Board for ratification within ~~60~~30 calendar days. ~~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 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)

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

No District funds may be used to purchase alcoholic 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 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 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)~~

21. 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)

32. 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 shall report these amounts to the Board on a regular basis.

43. The Superintendent 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~~ regular 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 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

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 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 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; Revised 8/25/10; Revised 2/12/14