

CHAPTER 6 – CONTRACTS

A. WHAT IS A BINDING CONTRACT WITH THE DISTRICT? (DD-3)

A contract is an agreement to do or not do a certain thing. For a contract to be legally binding, it must have: approval from designated personnel or designees, their consent, a lawful object, and sufficient cause or consideration. If any one of these elements is missing, the contract may not be enforceable in a court of law.

Only specified personnel within the District are capable of entering into a contract that binds the District. Authority to sign contracts in the District, evidencing consent, is limited to those employees who have been duly authorized in writing by one who has the capability. Currently, the Chief Procurement Officer has delegation of authority to bind the District. Personnel from schools/offices are not delegated to enter into contracts with the exception of low-dollar Purchase Orders. Anyone not following the guidelines herein, may be personally liable to the District for any and all money that the District paid out as a result of the malfeasance (Education Code 17604).

A contract or agreement signed by an unauthorized person or for an amount exceeding an individual's authority, will not be legally-binding, will not be honored by the District nor will payment be made for services rendered. In addition, the contract must be for a lawful purpose; a contract for an illegal purpose is not enforceable. And, finally the contract must involve mutual obligations or promises, also known as consideration; *i.e.*, both parties have to have assumed a legal obligation under the contract. For the District, this means that one party has agreed to provide materials or services and the other party has agreed to render payment in return. If only one party has a legal obligation under the contract, it lacks consideration and no enforceable contract is created.

PSD is available to assist the School/Office in meeting the requirements for a legally binding contract. Please note that IFB's do not require further development into contract form. RFP's do require a contract to be executed between the District and the awardee. Purchase Orders are considered enforceable contracts.

DD-3 Issuing a contract

DO check with Procurement if a vendor asks you to sign a contract.

DON'T sign a contract with a vendor. School Principals, Heads of Organizations and senior staff do not have contract signing authority. It is a matter of District policy and of public law that only the governing board of a school district may issue contracts. At LAUSD, the Board of Education has delegated the contracting authority to the Superintendent, who in turn has sub-delegated that authority to the Chief Operating Officer and the Chief Facilities Executive. No school or office has contracting authority, except by specific sub-delegation via the above channels.

“Fully executed”, for this purpose means that the contract or Purchase Order must carry the signature of a duly delegated contracting official of Procurement, except where a low-dollar Purchase Order may be issued by a school or office, or where a Master Services Agreement authorizes the school or office to issue a Task/Work Order accompanied by a Purchase Order.

B. CONTRACT AMENDMENTS

A contract can be amended to extend the period of performance, increase the contract amount to obtain additional services, allow for a change in the contract's current scope of work, or any combination of the above. Any change or alteration of a contract shall be specified in writing, processed through PSD, and the cost agreed upon with the District.

B.1. Board Approval

Prior Board Approval is required on all contracts, Purchase Orders, or amendments that increase the total amount in excess of the bid limit. These changes apply to all procurements for professional services, materials, supplies, equipment, and general services. In addition, the State bid limit changes on January 1st of each year therefore, each year, the above dollar amount will change.

B.2. The "75% Rule" and Dead Contracts (Professional Services Only)

A contract cannot be amended if there is a significant change in the contract scope of services, or if the contract value increases to greater than 75% of the original contract amount. Under limited circumstances, the Director of Procurement Services or designee may waive the 75% Rule if it is in the best interest of the District. Adequate justification must be submitted and approved prior to continuation of the service.

Additionally a contract cannot be amended if the contract period ended prior to the date of the amendment request (also known as a "dead contract"). In such cases, the School/Office may need to initiate a new contract as the amendment request will not be approved. Services may not be continued or rendered by Contractor until such time as a new contract is fully executed.

C. EXTENSIONS

At the discretion of the Chief Procurement Officer, extensions to contracts may be granted (Public Contract Code § 20118.4).

D. PRICE ESCALATION (Supplies, Equipment and General Services Only)

At the discretion of the Chief Procurement Officer and mutual agreement of the parties, adjustments due to price escalation may be made to contracts (Public Contract Code § 20118.4).

E. PRODUCT REPLACEMENT (Supplies, Equipment and General Services Only)

At the discretion of the Chief Procurement Officer and mutual agreement of the parties, adjustments due to product replacement may be made to contracts. (Public Contract Code § 20118.4)

F. NAME CHANGES

When a vendor has changed its name, PSD must determine whether the interest of the District or vendor has been altered and whether the name change affects the legality of the contract.

G. CONTRACT TERM

Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired for the District, or for materials or supplies to be furnished or sold to the District may be made with an accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to exceed three years. (Education Code 17596)

H. CONTRACT EXTENSION/TERMINATION

All contracts have a definite start date (the date when the performance begins) and end date (the latest date by which the performance is concluded). The School/Office is responsible for requesting a contract extension in the event that services will not be completed by the end date. Occasionally, the School/Office may need to terminate the contract prior to the contract end date.

H.1. Reasons for Early Contract Termination

Reasons for early contract termination may include, but are not limited to, the following situations:

- (1) Lack of funding, as upon the implementation of a District-wide freeze on expenditures for contract services.
- (2) Vendor completes services earlier and at a lower cost than originally contemplated.
- (3) Vendor performance is unsatisfactory.
- (4) The District is no longer in need of the services or goods.

H.2. Importance of Written Documentation

In each of the above circumstances, the School/Office shall document any conversations he or she has with the vendor to notify the vendor why early termination may be required. Such documentation is especially important when the vendor's performance is unsatisfactory.

H.3. Authority to Terminate a Contract

While a School/Office may suspend a vendor's performance, only authorized personnel in PSD may officially terminate a contract.

H.4. Procedure

To partially or fully terminate a contract, you must complete a Request for Procurement Action and submit it to PSD along with the termination effective date and copies of any correspondence sent to the vendor and a chronology of events leading up to the request for termination, if applicable. In the case of a vendor performance issue, PSD will work with the School/Office to either assist the vendor in improving his performance or terminate the contract in conformance with the contract terms.

I. CONTRACT RENEWAL OPTIONS

Contract renewal options are usually included in multi-year contracts to allow the District flexibility and their exercise (so that the contract continues) is always at the school's/office's

discretion. The District is not compelled to exercise an option. The below points are very important understand when considering renewal options.

1. If an option is not exercised, the contract will expire on the date shown in the contract, and the school/office will need to request a new contract, showing competition, as appropriate, if the school/office wants to continue to receive the goods or services after the expiration date of the original contract.
2. Most renewal option exercises are unilateral because they are a right that the District obtains in the initial negotiation for the contract. By signing the original contract, the contractor has agreed to the renewal options.
3. Renewal options are not self-exercising. The school/office must request PSD to exercise an option no later than 30 days prior to the contract expiration date.
4. Option exercises may be priced or unpriced, but regardless, the decision to exercise an option is the sponsor's.
 - a. If priced, the option paperwork submitted to PSD by sponsor will consist of RFPA and funded Shopping Cart.
 - b. If unpriced, the option paperwork submitted to PSD by sponsor will consist of an RFPA to extend services, but not necessarily a Shopping Cart.
 - c. Only PSD is authorized to exercise the option on behalf of the sponsor. A letter or amendment must be sent by Procurement to the contractor.
5. Once exercised, the contractor is obligated to perform according to the terms of the renewal option. If the sponsor wants to change the scope of services during the renewal period, then it is a new negotiation, no longer at the sole discretion of the District.
6. "Optional Services," if included in a contract, are not necessarily part of a renewal option. Activation of optional services may occur at any time during an initial contract period or during an additional period that was created via renewal option exercise.