



10 QUESTIONS ABOUT CONTRACTS

Christopher Hine
General Counsel
presenter

10 Questions

- When reviewing possible contracts for KCCD you should ask yourself the following 10 questions
- These questions, and their answers ***will not make you an expert*** on public agency contracts but they may help you avoid some basic problems

1. Who are the parties ?

- KCCD should always be one of the parties. The colleges are not legal entities and therefore have no ability to contract
- The other party should be a person, a government agency or a legal entity such as a corporation, LLC or a Limited Partnership.
- The contract should identify the type of entity, for example “*Stinkco, a New Jersey Corporation*” or “*Shifty Bros., a Nevada LLC*”

2. Who can contract for the District ?

- Only the Chief Financial Officer and the Chancellor (or designee) are authorized to enter into contracts on behalf of KCCD(BP 3A4)
- Board approval or ratification is required for all contracts (BP 3A4B)

3. What kind of contract ?

- Most KCCD contracts will be one of **three types**
- **Facilities**- Contracts to build, repair or maintain structures or associated grounds and equipment
- **Supplies**- Furnishing materials or equipment is the majority of the value of a supply contract.
- **Services**- Labor performed by people or equipment furnishes most of the value.

4. What law governs ?

- Many contracts have a choice of law provision
- Pursuant to Board Policy and the Education Code all KCCCD Contracts must be governed by California law
- KCCCD preference is that the courts of Kern County be specified as the appropriate forum for disputes

5. Is the Document a Contract ?

- A contract is an agreement creating obligations enforceable by law.
- The basic elements of a contract are:
 - mutual assent
 - consideration
 - capacity, and;
 - legality
- If you do not know whether the document is a contract you should probably seek assistance

Contract or Not ?

1. Fritz tells Hans that he will pay him \$5,000 to steal Wolfgang's 2013 black BMW. Hans agrees to steal it. Both Fritz and Hans are over 18 years of age.
2. Fritz tells his 15 year old nephew that he will pay him \$5 to wash his new 2013 black BMW

6. What if I Improperly Enter Into a Contract?

- Employees who enter into a contract without approval may be personally responsible for payment (BP 3A4J)
- A unauthorized contract may be subsequently be ratified by the Board of Trustees
- Unauthorized contracts may also result in disciplinary action

7. What is the term of the contract ?

- Most contracts for KCCD are limited to 5 years in duration.
- Some contracts, for example real property leases, may be of longer duration.
- A contract with a shorter termination provision (like 30 days written notice) should still be limited to a maximum of 5 years.

8. Is the District the Purchaser?

- Most KCCD contracts are for the purchase of services, supplies or facilities construction.
- Some contracts, for example facilities use, require that the district provide services. Many grant agreements or applications require the use of KCCD resources or services.
- Some agreements, usually designated as memorandums of understanding (MOU), are with other agencies and carry mutual obligations. These agreements may be conditional in nature.

9. Does the Document Describe the Transaction ?

- The 5 W's + H are a good guide
- **Who**- are the parties ?
- **What**- is the consideration?
- **When**- is the contract term and date(s) of performance?
- **Where**- is location of work or place of delivery?(Delivery is when ownership changes)
- **Why**- are we entering into the contract? Is it for supplies, services, facilities, an MOU, a grant or is it required by law?
- **How**- how will the work be performed (what standards or specifications must be followed), how will we know that it is complete?

10. Is this the Right Document?

- **District recommended form** or vendor form?
- Is the “template” more than 2 years old?
- Does the document match the transaction?
 - For example, we shouldn’t use an ICA for a \$500,000 contract for materials or supplies
- Does the document protect the district?
 - For example, a contract where vendor employees will be on campus should have insurance and indemnity provisions in KCCD’s favor

District Recommended Forms

Currently four recommended forms (for non-construction)

1. The ICA (Independent Contractor Agreement)-used for small services contracts to ensure that there is no employment relationship inferred
2. Dual Enrollment Memorandum of Understanding (MOU)- currently being revised to conform with AB 288
3. Instructional Services Agreement (ISA)- currently being revised to reflect changes in the law
4. Purchase order for materials and equipment

Proposed New Forms

- General Terms for Supplies
- General Terms for Services- Used for service contracts with larger vendors
- These will be incorporated by reference into simple PO document

When in Doubt, Ask.

- Questions regarding contracts should be forwarded to the CFO and/or General Counsel for review.
- General Counsel process is to allow 10 business days for review
- Some questions may be sent to outside counsel for handling depending on subject matter and workload.

Questions?



- Send all questions regarding this presentation to:
christopher.hine@kccd.edu