

SANTA ANA UNIFIED SCHOOL DISTRICT

BP 3316(a)

Business and Noninstructional Services

Ethical Standards for Board Members and Employees
in Contact with Contractors, Vendors and Consultants

1. **Application of "Ethical Standards for Board Members and Employees in Contact with Contractors, Vendors and Consultants".** These **MANDATED Ethics Standards** shall govern the conduct of all contractors/vendors and consultants of the Santa Ana Unified School District ("SAUSD") in any relationship with Board members and/or employees. These standards supersede all prior written ethics policies duly adopted by the SAUSD which are in conflict with these standards. These standards are to be read in conjunction with the latest editions of applicable SAUSD contracting and procurement policies and procedures. All contractors/vendors shall insure that their subcontractors comply with these Ethics Standards.
2. **Purpose.** The purpose of these Ethics Standards is:
 - a. To protect the integrity of the procurement process;
 - b. To provide a comprehensive statement of expectations governing the conduct of contractors/vendors doing business with the SAUSD so they will be able to compete fairly, and perform their work and services in an ethical manner.
3. **Expectations.** This document does not address all ethical issues which may arise in the course of doing business with the SAUSD. Each person and entity is expected to act ethically at all times and in all things. The SAUSD Business Services Office is responsible for providing education and advice on ethical issues. Contact the Business Services Office with any questions regarding these Ethics Standards.
4. **Enforcement.** The provisions of these Ethics Standards are enforced by the SAUSD Associate Superintendent, Business Services, or designee and other appropriate enforcement authorities. The SAUSD may reject any bid or other proposal, or impose other sanctions against any person, contractor/vendor or entity that has not complied with the requirements of these Ethics Standards.
5. **Prohibitions.** No bidder, proposer, vendor, contractor or subcontractor shall fraudulently deceive or attempt to deceive any District official with regard to any material fact pertinent to any pending or proposed SAUSD action. Nor shall they do anything with the purpose or intent of placing any District official under personal obligation to the bidder, proposer, vendor, contractor or subcontractor.
6. **Avoid the Appearance of Impropriety.** All contractors shall refrain from conduct which they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they are using their relationship with the SAUSD in an improper manner.

7. **Lobbying.** Under the SAUSD Ethics Standards, a "lobbyist" is defined as any person who receives \$4000 or more compensation in any twelve (12) month period other than reimbursement for reasonable travel expenses, to influence any SAUSD action. All persons classified as a lobbyist under this definition shall register with the SAUSD prior to the commencement of any lobbying activity. The SAUSD may disqualify any person or entity that is in violation of this policy from participating in the contracting process. The SAUSD definition of lobbyist may be different than definitions used by other agencies. Consult with the Associate Superintendent, Business Services, to determine whether you or others retained by you are lobbyists.
8. **Zero Tolerance Regarding Gifts.** No bidder or proposer shall offer, give, or promise to offer or give, directly or indirectly any money, gift or gratuity to any SAUSD Board member, employee or consultant at any time.
9. **Zero Tolerance Regarding Offers of Employment.** No bidder, proposer, or contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any SAUSD Board member, employee or consultant, their immediate family, spouse, significant other or business associates of such persons if such offer of employment is conditioned expressly or implicitly on the awarding of a present or future contract, or preference in the awarding of a contract to anyone at any time by the SAUSD.
10. **Contacts by Staff Prior to the Issuance of a Solicitation.** While informational and market research contacts with prospective contractors are a valuable source of data to the SAUSD, such contacts can be perceived as improper. All parties shall exercise sound judgment and caution to prevent an actual or implied impression that such contacts will result in preferential treatment of the prospective contractor.
11. **Receipt of Preliminary Information.** No bidder, proposer or contractor shall request, attempt to request or accept from any SAUSD Board member, employee or consultant the dissemination of any information regarding present or future contracts, or expectations of such contracts, unless this information is made available at the same time and in the same form to all other bidders, proposers or contractors.
12. **Receipt of Protected Information.** No bidder, proposer or contractor shall solicit, obtain or accept, directly or indirectly, from any SAUSD Board member, employee or consultant, any information developed during the course of the contracting process relating to the procurement prior to the contract award unless this information is a public record under the Public Records Act.

13. **Influencing Contract Decisions, Negotiations and Protests.**

a. Commencing with the issuance of a request for proposal, a request for qualifications or any other document initiating the contracting process, and ending at the time the staff recommendation for award is made public, no contractor or representative of a contractor participating in the contracting process shall contact by any means or engage in any discussion concerning the award of the contract with any Board member or consultant. Any such contact may be grounds for the disqualification of the contractor. Anyone preparing a bid may contact SAUSD staff for clarification purposes only. A recommendation for contract award is made public and a contact may be initiated when the contract's board report is published by the Board Secretary.

b. During price negotiations of non-competitive bid contracts, contractors or their representatives shall not contact, lobby or otherwise attempt to influence SAUSD employees or consultants (other than negotiation team members), or Board members relative to any aspect of the contract under negotiation. This provision shall apply from the time of award until the recommendation for execution of the contract is made public. Any concerns relative to any contract under negotiation shall be communicated only to the Associate Superintendent, Business Services or designee for resolution.

c. No contractor or their representative who submitted a proposal or bid in response to a request for proposal, a request for qualifications or any other document initiating the contracting process shall contact a Board member regarding a protest submitted, regarding the recommended contract award or any lawsuit or potential lawsuit regarding the recommended contract award, or any dispute, lawsuit or potential lawsuit concerning the contract.

14. **Contractor Qualification.** The SAUSD will accept bids and proposals for contracts and procurement of goods or services having a value, to be determined by the SAUSD, only from firms or entities which are complying with the SAUSD contracting and procurement policies and procedures, the Ethical Standards for Board Members and Employees in Contact with Contractors, Vendors and Consultants.

15. **Disclosure of Former SAUSD Employees.** To prevent former SAUSD employees and Board members from using their relationship with the SAUSD, a SAUSD department or current SAUSD employees to improperly influence procurement decision-making, all bidders, proposers and contractors are required to disclose any of their employees, subcontractors or consultants who, within the last three years, have been or are employees of the SAUSD. The disclosure will be in accordance with current SAUSD contracting/procurement guidelines, but will include (at a minimum) the name of the former SAUSD employee, a list of the SAUSD positions the person held in the last three years, and the dates the person held those positions.

SAUSD will not contract with any bidder, proposer or contractor that compensates any former SAUSD employee, Board member or consultant to influence any action on a matter pending with SAUSD if that employee, within the last twelve (12) months, held a SAUSD position in which they personally and substantially participated in that matter.

SAUSD will not contract with any bidder, proposer, contractor or sub-contractor that employs a former SAUSD employee, Board member or consultant who, while serving in a SAUSD position within the last two (2) years, substantially participated in the development of the contract's RFP, requirements, specifications or in any part of the contract's contracting process.

The SAUSD Associate Superintendent, Business Services, or designee, upon a showing of good cause, may waive this prohibition in writing with notification to the Board prior to awarding the contract.

16. **Submitting Proposals After Developing Specifications.** A contractor or consultant may participate in the development of a scope of work, solicitation document, contractual instrument or technical specification for public works on behalf of the District, as long as it does not create an exclusive situation whereby they are the only entity able to bid.
17. **Conflicts of Interest.** A conflict of interest may exist when an SAUSD Board member, employee or consultant has a financial interest in or towards a person or entity, which results in a real or apparent advantage to that person or entity. The existence of a financial relationship between a contractor and any SAUSD Board member, employee or consultant, or a member of that employee's immediate family, who has participated in an SAUSD action or in the making of a SAUSD decision concerning that contractor, constitutes a conflict of interest. A conflict of interest may also exist if the contractor has previously employed, or is currently offering employment to, or considering the employment application of, any SAUSD staff or his or her immediate family.

If the contractor has a financial relationship with any SAUSD Board member, employee or consultant, the contractor shall disclose this fact in writing to the Associate Superintendent, Business Services or designee as soon as this potential conflict of interest is known. The contractor is under a continuing duty to advise the SAUSD of any conflicts of interest that arise during the term of the contract.

While not all conflicts will cause a contractor to be disqualified, failure to disclose a known conflict may justify disqualification and/or sanctions. **BE SAFE - DISCLOSE.**

The Associate Superintendent, Business Services or designee, in consultation with legal counsel, shall determine whether a conflict of interest exists and recommend appropriate action for resolution. If it is determined that an actual or apparent conflict of interest exists, the SAUSD Associate Superintendent or designee shall notify the contractor in writing of this finding and the action that the SAUSD shall take to resolve this conflict of interest.

18. **Sanctions.** The SAUSD encourages good faith reporting of all suspected violations of these Ethics Standards. There shall be no adverse consequences suffered by anyone for making a good faith report of a suspected violation nor shall there be any adverse consequences suffered by anyone accused of violating these standards and subsequently found not to have violated these Ethics Standards. The identity of any persons reporting violations of these standards shall be kept confidential to the extent permitted by law.

All suspected violations shall be reported immediately to the Office of the Associate Superintendent, Business Services, for investigation. If the Associate Superintendent determines that the allegations have merit, the matter will be referred to the appropriate authorities. The SAUSD may take one or more of the following actions:

- a. Meeting with the contractor to discuss the violation;
- b. Suspending the contract or subcontract involving the offending contractor;
- c. Directing the prime contractor to remove the offending subcontractor from the project;
- d. Rescinding, voiding or terminating the contract; and/or
- e. Any other reasonable sanction deemed appropriate.

The Associate Superintendent, Business Services or designee shall state in writing to the contractor his/her findings regarding the violation and, if appropriate, recommend sanctions. The contractor may request an informal hearing with the Associate Superintendent, Business Services or designee to explain the contractor's position regarding the alleged violation and/or sanctions prior to the Associate Superintendent, Business Services or designee taking action. This request must be made in writing and received by the Associate Superintendent, Business Services or designee within ten (10) working days of the recommendation for sanctions. If no request is received within the ten (10) working day period the recommended action shall be taken.

If a timely request for a hearing is received, the informal hearing shall take place within ten (10) days after the Associate Superintendent, Business Services or designee receives the request. The contractor may be represented by legal counsel at the contractor's own expense at the hearing. Within ten (10) working days after the informal hearing, the Superintendent or designee shall advise the contractor in writing the outcome of the hearing at which time the decision becomes final.

If the sanctions imposed by the Associate Superintendent, Business Services or designee are anything more than a conference with the offending contractor, the offending contractor may:

BP 3316(f)

- a. File an appeal to the Governing Board, which reserves the right to determine whether to hear the appeal. The Governing Board's decision to hear an appeal is within its sole discretion.
- b. Request a full hearing before the American Arbitration Association (AAA) pursuant to its rules and regulations. This request must be in writing and directed to the Associate Superintendent, Business Services or designee. This request must be received within ten (10) working days after the Associate Superintendent's decision becomes final.

The contractor shall bear the costs associated with the arbitration. The hearing shall take place in the County of Orange, State of California and shall take place as soon as possible. Any decision rendered by the AAA shall be binding on all parties.

In the case of a procurement in which a contract has not yet been awarded, the SAUSD shall determine whether to terminate the procurement or take other appropriate action.