

REQUEST FOR PROPOSAL

SIGN AND RETURN THIS PAGE

OAKLAND UNIFIED SCHOOL DISTRICT

PROCUREMENT DEPARTMENT

Attention: Michael Moore, Operations Officer

900 HIGH STREET

OAKLAND, CA 94601

Proposal Number: 17-18/01

Date: April 16, 2018

Title: **DISTRICT-WIDE COMMODITIES**
“EPROCUREMENT” SYSTEM

PROPOSALS MUST BE RECEIVED:

On May 16, 2018 by 2:00 P.M. at the above address

DO NOT INCLUDE SALES OR EXCISE TAXES in proposal pricing.

Sign the proposal, place in envelope and write RFP Number and Title of Procurement on outside. Sign and return this page. Retain duplicate copy for file.

ALL OFFERORS COMPLETE THIS SECTION:

2018

Upon execution of a Contract, the undersigned agrees to furnish, subject to provisions on the next page, all articles or services within the dates specified, in the manner and at the prices stated, in accordance with the advertisement, specifications, proposal, special conditions and general conditions, all of which are made part of the proposal, when authorized by Agreement/Contract approved by the Governing Board of the Oakland Unified School District.

Name under which Business is conducted:

Business street address: _____ Telephone: _____

City

State

Zip Code

IF SOLE OWNER, sign here:

I sign as sole owner of the business named above:

Signed _____ Typed Name _____

IF PARTNERSHIP OR JOINT VENTURE, sign here:

The undersigned certify that they are partners in the business (joint venture) named above and that they sign this proposal with full authority to do so (one or more partners sign):

Signed _____ Typed Name _____

Signed _____ Typed Name _____

IF CORPORATION, sign here:

The undersigned certify that they sign this proposal with full authority to do so:

Corporate Name: _____

Signed _____ Typed Name _____ Title _____

Signed _____ Typed Name _____ Title _____

Incorporated under the laws of the State of _____

OAKLAND UNIFIED SCHOOL DISTRICT
REQUEST FOR PROPOSALS - DISTRICT-WIDE COMMODITIES EPROCUREMENT SYSTEM
[RFP NO. 17-18/01]

DISTRICT-WIDE COMMODITIES "EPROCUREMENT" SYSTEM

Oakland Unified School District (the "District" or "OUSD") invites you to submit a proposal for a District-wide COMMODITIES procurement system for OUSD pursuant to this Request for Proposals ("RFP"). The District E-Commerce Procurement system is a central online ordering site in which authorized District users can shop the websites of multiple vendors. Once shopping is completed, the requisition is created and sent through the District's Procurement approval process. Upon completion of the approval process, the Purchase Order is sent electronically to the appropriate vendor for processing and delivery of the purchased items. Purchase Order information is then loaded into the District's current business accounting and financial management system, which is known as ESCAPE, for financial tracking and online receiving. Further information regarding ESCAPE can be found at <http://www.escape.technology/>.

The successful vendor must have the ability to provide connection to an online eCommerce site, accessible from the E-Commerce Procurement System, via cXML punch-out, where the online ordering content is hosted and where shopping carts can be created and transferred to ESCAPE.

The successful vendor must have the ability to accept purchase orders via cXML that can be integrated directly into the vendor's order processing system. The vendor must also be able to transmit invoices via cXML to ESCAPE to be integrated directly into the E-Commerce Procurement system.

This RFP shall not be construed in any manner to be an obligation by OUSD to enter into an agreement or purchase order with any company.

The District reserves the right to cancel or revise in part or in its entirety this RFP. If the District cancels or revises this RFP, all respondents will be notified. The District also reserves the right to extend the date responses to this RFP are due, as well as any other dates set forth in this RFP.

All requests for information concerning this RFP must be directed to Michael Moore, Operations Officer, and may only be submitted by email to: michael.moore@ousd.org.

Vendors are not to contact District staff (except Mr. Moore) or members of the Board of Education in regards to this RFP or the selection process. Any Vendors who violate this request may be disqualified from further consideration.

Replies involving any substantive issues will be issued by addenda and emailed to all parties recorded by the District as having received this RFP. Mr. Moore must receive substantive questions as indicated in the "Key Dates" schedule on or before 5:00 p.m. on April 20, 2018. Answers to substantive questions will be provided by 5:00 p.m. on April 30, 2018. Only questions answered by formal written addenda will be binding.

Submission by facsimile or e-mail is not acceptable. Submissions received after the deadline will be returned unopened.

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A Vendor may withdraw its response to this RFP by submitting an email with a written request signed by the firm's authorized representative as an attachment to the email. The withdrawal must be received by Mr. Moore prior to the date and time set forth herein as the due date for receipt of the responses. Responses may be withdrawn and resubmitted in the same manner, if done so before the submission deadline. Withdrawal or modification of a submitted response in any other manner will not be permitted.

Proposals become the property of the District, and may be returned only at the District's option and at the Vendor's expense. To the extent permitted under applicable law, the District will keep all proposals confidential, although most documents provided to the District pursuant to an RFP are subject to the California Public Records Act and/or other state or federal laws.

KEY DATES

Time is of the essence for the RFP submittal and contract completion. Respondents are advised of the key dates and times shown below and are expected to adhere to them.

1. DISTRICT'S EVALUATION PROCESS

1.1 SCHEDULE

1.1.1 RFP formally advertised / solicitation period commences: April 16, 2016

1.1.2 Pre-proposal Questions, Requests for Information due: April 20, 2018
by 5:00 p.m. via email only to michael.moore@ousd.org

1.1.3 Answers from OUSD: April 27, 2018 by 5:00 p.m.

1.1.4 Proposals due: May 16, 2018 at 2:00 p.m.

1.1.5 Finalists notified: May 23, 2018

1.1.6 Interviews: May 24th, 25th & 28th 2018 at 900 High Street,
Procurement Office 2nd Floor Oakland California.

1.1.7 Public Opening of Bids at:
Time: 2:15 P.M.
Location: 900 High Street
Procurement Office 2nd Floor
Oakland CA 94601

1.1.8 Final determination/award: June 13, 2018

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RFP RESPONSE REQUIREMENTS

Responses must contain all requested information and data and conform to the format described in this section. It is the Respondent's responsibility to provide all necessary information for the District to evaluate the response, verify requested information and determine the Respondent's ability to perform the tasks and activities defined in this document.

INDEPENDENT CONTRACTOR AGREEMENT

See anticipated contract language section.

DIRECTIONS FOR DELIVERY OF THE RESPONSE

The Respondent must submit four (4) paper copies of its response, as well as one (1) electronic copy on a USB flash drive, to the District Representative contact name and address listed below:

Mr. Michael L. Moore, Sr.
Operations Officer
Oakland Unified School District
900 High Street
Oakland, CA 94601

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A. GENERAL REQUIREMENTS

The successful vendor must be able to meet several minimum requirements.

1. Briefly describe how you will meet or exceed each of the following service requirements: **(20 points)**

- 48 hour Delivery following the majority of online orders
- 98% Fill Rate & 98% On Time Delivery
- Summary Billing with the ability to consolidate invoices by District site on a monthly basis
- Ordering Methods – E-procurement
- Order Confirmations
- Reporting – Usage, quality/performance, quarterly program meetings

2. References (20 Points)

Please provide two (2) references of entities with similar size and scope to Oakland Unified School District. These references should be, in this order of preference, (a) California public school districts; (b) U.S. public school districts; (c) other California public higher education institutions (e.g., universities, colleges); (d) other California higher education institutions (e.g., universities, colleges); (e) other U.S. public higher education institutions (e.g., universities, colleges); (f) other U.S. higher education institutions (e.g., universities, colleges); (g) any other entity. Include each entity's name, contact name, address, phone number, estimated volume with the entity, years serviced, and whether or not you have a current, valid contract with said entity (and if so, provide a copy of said contract, where allowable, and if not allowable explain the reason why not).

3. Pricing (30 points)

Provide your company pricing structure to price items purchased from your full online ordering platform/structure. Please provide an estimate of the numbers of items available at any given time via your full online ordering system. The Internet link to your online ordering system must be viewable via Google Chrome and the other major web browsers commonly used at the time of your RFP response.

The District reserves the right to, and may, negotiate any and all prices with the Vendor conditionally selected prior to award of contract to said vendor.

4. Products and Programs – Scope of Offering (25 points)

1. Please detail all products and services that would be of interest to the District with regard to meeting procurement objectives.
2. Will all orders for items be processed through one account number, so that the District can track usage and ordering history? If not, how would you handle this District need?
3. What type of online ordering do you offer end-users?
4. What is the strategy behind your company's online ordering layout? What are the benefits to large business customers like the District when it (or its individual employees) utilizes online ordering?
5. If your company uses distribution facilities, what is the process to fulfill a requested item not supported by a particular distribution facility? What percentages of your orders, if

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any, are fulfilled with the use of a wholesaler? Are these orders delivered within 48 hours? If a wholesaler is used, will the District receive the same contracted price?

6. Describe your recycled or "green" product offering.
7. Please detail how you can ensure that each supplier from whom the District may purchase items through your eProcurement system could be confirmed by you that said supplier is not listed as an excluded entity on the Excluded Parties List. (<https://www.sam.gov/>)
8. The successful bidder's eProcurement system must be able to limit the collective purchases by all District sites from one vendor to an amount not to exceed \$90,200 in each District fiscal year (*i.e.*, from July 1 to June 30 of the subsequent year(s)). This includes the eProcurement system's ability to automatically place a hard cap or reject all attempted, subsequent purchases from said vendor when the \$90,200 limit would be or has been hit. Does your system have this capability? If so, describe such.
9. The successful bidder's eProcurement system must be able to limit each purchase to a maximum of \$500 per item, with a maximum of \$5,000 per order, regardless of the item(s) ordered. Does your system have this capability? If so, describe such.
10. Similar to the above, the successful bidder's eProcurement system must be able to place a "hold" on orders that exceed certain dollar amounts (to be determined by the District) until such an order is approved by the designated District personnel (again, to be determined by the District). Does your system have this capability? If so, describe such.
11. The successful bidder's eProcurement system must be able to limit the items that may be purchased by District end users to only items authorized by the District. Does your system have this capability? If so, describe such.
12. The successful bidder's eProcurement system must be able to limit the delivery of items that may be purchased by District end users to only District sites. Does your system have this capability? If so, describe such.
13. The successful bidder's eProcurement system must be able to limit purchases to only end users and District employees specifically authorized by the District. Does your system have this capability? If so, describe such.
14. The successful bidder's eProcurement system must be able to bar persons and entities from making sales to the District where such persons/entities/sales would violate the state and federal laws governing conflicts of interest; District Board Bylaw 9270 (attached hereto) and/or District Board Policy 10000 (attached hereto). Does your system have this capability? If so, describe such and also address the below ***hypotheticals***.
 - a. A District employee intends to sell items from his/her registered and licensed business through your eProcurement system to the District, but doing so would violate the law and/or District policy regarding conflicts of interest. How would you bar that person from making such prohibited sales to the District before any such sales were made?
 - b. A person intends to create and enroll his/her completely false "business" (*i.e.*, no such business exists) through your eProcurement system in order to make a sale to the District. How would you bar said person from doing so in the first place?
 - c. A District employee intends to (a) order items in his/her personal capacity on

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behalf of the District from (b) his/her spouse's/partner's registered and licensed business through your eProcurement system that will (c) be shipped to him/her, resulting in "self-dealing." How would you bar said person from succeeding at this arrangement?

15. Explain in detail how your system will allow for local Oakland, CA businesses of any and all sizes to enroll in/sign up with your system as a supplier to District end users by way of your eProcurement system. Your explanation must include specific information regarding the following:
- a. What is the fee you charge for a business to enroll as a vendor/supplier in your eProcurement system? Also detail if that is a one-time fee or a recurring fee, and if recurring how often it is assessed.
 - b. If there is a fee (whether one-time or recurring) you charge for a business to enroll as a vendor/supplier in your eProcurement system, will you waive or reduce such a fee for local Oakland, CA businesses? If you would only reduce (but not waive) such a fee, by what amount or percentage would you reduce said fee?
 - c. What do you charge (e.g., percentage, flat fee and/or some other cost calculation) a business who is enrolled as a vendor/supplier in your eProcurement system and who makes a sale through that system?
 - d. What are the minimum technological requirements for a vendor/supplier to enroll in and operate through your eProcurement system (e.g., email address; webpage; etc.)?
 - e. What are all of the other minimum requirements for a vendor/supplier to enroll and operate through your eProcurement system (e.g., email address; webpage; etc.)?

5. Local Business Program / Mandatory Compliance (5 points)

On April 29, 2014, OUSD adopted a resolution amending the 2008 Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE) and increasing the mandatory local participation requirement from twenty (20%) to fifty (50%) percent for all capital program/construction related contracts and professional services agreements. As with all OUSD projects, companies must be certified by the City of Oakland in order to earn credit toward meeting the participation requirement.

The basic Local Business Utilization Policy requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation. The full version of OUSD's latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page: ousd.org > Departments, Offices & Services Directory > Facilities Planning & Management Department > Bids and Requests for Proposals > Bidding Information > 2014 Amendment to Local Business Participation Policy.

The District has waived the Policy for this RFP as to the Vendor with which the District ends up contracting, if any. However, the District expects each Vendor to facilitate support for the Policy by including in its Proposal some local business utilization, including but not limited to explaining in detail (as set forth above) how the Vendor's system allows for local Oakland, CA businesses to enroll in/sign up with the Vendor's eProcurement system as a supplier to District end users by way of the Vendor's eProcurement system.

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6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion & Non-Collusion

The Vendor must include a statement in its bid that states the following: "[Vendor's name] certifies to the best of his/her/its knowledge and belief, that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by submitting this Bid, certifies that the Vendor does not appear on the Excluded Parties List. (<https://www.sam.gov/>)"

Further, in accordance with California law, each Vendor must submit with its bid a Non-Collusion certification that states: "[Vendor's name] and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; or (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP."

B. COMPANY INFORMATION

1. Briefly describe your company's history and experience in the E-Commerce industry. How long have you been in the business-to-business segment? Attach a copy of your most recent Annual Report.
2. How do you differentiate yourself from your major competitors?
3. Can your company provide comparison pricing or bids from at least three vendors on individual items being ordered?
4. Can your company provide items from at least twenty thousand (20,000) vendors through your platform?
5. May local vendors be added to your platform for ordering customized catalogues? If so, as set forth above please explain in detail how that is allowed for by your eProcurement system.
6. May items in your platform be sorted by preferences such as minority-owned businesses, woman-owned businesses, environmentally friendly businesses, etc.?
7. Provide details on the distribution facility(ies), if any, which will service the District.
8. Can you deliver to over 150 locations (a) next day; (b) next business day; (c) within 48 hours; and/or (d) within 48 business hours of an order being placed? [Please answer each part of this question.]
9. Does your company own your trucks and employ your own delivery drivers, or do you contract out with UPS, FedEx, etc.? What is the delivery process for items ordered from your company?
10. What is your company's commitment to corporate responsibility?
11. Do you have a disaster recovery program?
12. Does your company have a quality initiative? If so, please describe your program and how it benefits your customers.

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13.List any third party quality-related recognition or awards your company has received.

14.Oakland Unified School District places strong emphasis on the need for a long-term strategy. Describe your strategic direction and the implications on Oakland Unified School District.

15.Describe your strategy for moving your company toward innovation and/or future technologies and how this can benefit Oakland Unified School District.

C. TECHNOLOGICAL CAPABILITIES

1. Please discuss your overall electronic ordering capabilities. Include features and benefits, number of users, and annual revenue.
2. What online security measures does your company employ?
3. Describe your experience in working with third-party e-procurement systems. What are your punch-out capabilities and advantages?
4. Do you have the ability to track interaction by specific end users? If not, can you access an individual's ordering history without asking for account and/or ship to information?
5. Do you have the ability to provide connection to an on-line eCommerce site, accessible from the E-Commerce Procurement System via cXML punch-out, where the online ordering content is hosted and where shopping carts can be created and transferred to ESCAPE?
6. Do you have the ability to accept purchase orders via cXML that can be integrated directly into the vendor's order processing system?
7. The vendor must be able to transmit invoices via cXML to be integrated directly into the e-Procurement system.
8. Can you integrate with this system within 30 days of formal, approved launch of a business relationship with the District?

D. ACCOUNT SET UP, CUSTOMIZATION AND MANAGEMENT TOOLS

1. Please discuss your e-commerce implementation and the resources that will be dedicated to this effort.
2. What Payment Terms can you offer?
3. Do you offer discounted terms? If so what are they?
4. Do you have a minimum order charge? If so, what is the minimum order amount?
5. Explain your company's capabilities to customize online orderings, including blocking items, adding proprietary items, etc. Please include an example on how your company would motivate District employees to use online ordering.
6. Please discuss the order restriction and approval process.

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E. SALES REPRESENTATION

1. What level of support do your Sales Representatives provide? How would this benefit the District?
2. Do you have any specialists that can work with the District for different commodities?

F. CUSTOMER SERVICE

1. How many Customer Service Representatives does your company employ? Where are they located and what is their availability?
2. What kind of assistance can your Customer Service associates provide for the District? Please describe their level of empowerment.
3. How do you measure the effectiveness of your Customer Service team?

G. TIME & MONEY SAVING OPPORTUNITIES

1. How can your company minimize the time our employees and procurement personnel spend ordering, following up on orders and/or trying to determine the status of specific product inventory?
2. How can you work with the District to reduce its total procurement costs?
3. How can you analyze the District's purchasing processes and quantify the time and money savings it can expect if the District changes its practices? Can you provide specific industry benchmarking?

H. PROGRAM PARTICIPATION/COMPLIANCE

1. How would your company implement the District's agreement and help it to expand employee participation? Please describe how you determine and demonstrate that program roll-out/ramp-up is complete and successful.
2. What types of reports can you provide on the District's purchasing activity at the individual employee/user level (i.e., ordering method, interactions with your company)? Will these reports include retail store purchases? Please provide the District with examples.

I. VALUE ADDED OFFERINGS

1. Describe any offerings your company can provide that will generate additional benefits for the District.
2. Are you willing to have this Agreement be "piggy-backable" for other school districts, government agencies and non-profit entities pursuant to California and United States law?

The Oakland Unified School District thanks you for your interest!

Sincerely,

Michael L. Moore, Sr.
Operations Officer

Addenda Section

Addendum #1 - Sample of Expected E-Commerce Range of Offerings

- 1. E-Procurement System, tailored to serve pre-K, 12-K and Adult Education schools.**
- 2. The ability to create approval workflows and use POs to track orders**
- 3. Two-Day Shipping on orders over \$50**
- 4. The ability to add local vendors to the eProcurement System environment**
- 5. The ability to provide web-based curriculum resources and rare classroom instructional supplies (i.e. science, ESL and Exceptional Children instructional needs) aligned with common core and California state standards**
- 6. The ability to discover, procure, manage, and distribute eBooks and apps**
- 7. Price discounts and other features optimized for educators.**
- 8. The ability to publish print-on-demand physical textbooks and educational content for teachers and students**
- 9. Cloud based access to free education content, training, collaboration portals, and services for administrators, teachers, staff, students and parents**
- 10. Free digital educational resources**
- 11. Electronics & Computer supplies**
- 12. Clothing & Shoes**
- 13. Digital Music**
- 14. Sports & Outdoors**
- 15. Applications (“Apps”)**
- 16. Landscape, Garden Supplies and Tools**
- 17. Industrial Supplies and Tools**
- 18. Custodial Supplies and Tools**

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**SAMPLE GENERAL CONDITIONS IN ANTICIPATED NEGOTIATED CONTRACT
WITH THE SUCCESSFUL VENDOR**

The following are some, but not all, of those contractual terms OUSD anticipates will become part of the contract ultimately negotiated between OUSD and the successful vendor.

1. CONTRACTOR'S STATUS/NON-ASSIGNMENT

The Agreement is not one of employment. The Vendor, in the performance of the Agreement, shall be and act as an independent contractor. The Vendor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint ventures of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which the District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. The Vendor shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to the Vendor's employees. In the performance of the work contemplated in the Contract, the Vendor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, the District being interested only in the results obtained.

Further, Vendor may not assign this Agreement or any interest herein without the prior written approval of the District.

2. GOVERNING LAW AND VENUE

The laws of the State of California shall govern the interpretation and performance of this Contract, but without resort to California's conflict of laws principles and laws. In the event that either party brings any action against the other under this Contract, the parties agree that such action shall be vested exclusively in Alameda County Superior Court or in the United States District Court for the Northern District of California.

**3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

Vendor certifies to the best of its knowledge and belief, that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by submitting this Bid, certifies that the Vendor does not appear on the Excluded Parties List. (<https://www.sam.gov/>).

4. RECORDS

The Contractor shall permit the authorized representatives of the District to inspect and audit all data and records relating to performance under this Agreement. Contractor shall maintain all such records for a period of three (3) years after the District makes final payment under this Agreement.

5. TERMINATION FOR DEFAULT

In the event the Contractor breaches the terms or violates the conditions of this Agreement, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate this agreement, and shall pay the Contractor only its allowable costs to the date of termination.

A. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

B. TERMINATION FOR CAUSE: The District may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the District may proceed with the work in

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any manner deemed proper by the District. All costs to the District shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

6. TERMINATION FOR CONVENIENCE

The District may terminate this Agreement, in whole or in part, at any time for the District's convenience and without cause by giving the Vendor ten (10) days written notice of termination. The Vendor will be paid for those services performed pursuant to this Agreement to the satisfaction of the District up to the date of notice of termination. The Vendor shall promptly submit its termination claim. If the Vendor has any property in its possession belonging to the District, the Vendor will account for the same and dispose of it in the manner the District directs.

7. NON-DISCRIMINATION

It is the policy of the District that in connection with all work performed under contracts there be no discrimination against anyone engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age. Therefore, Vendor agrees to comply with all applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act (beginning with Government Code Section 12900); Labor Code Section 1735; and District policy. In addition, Vendor agrees to require like compliance of all its subcontractor(s). Vendor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.

8. INDEMNIFICATION

Vendor shall indemnify, defend with counsel acceptable to the District, and hold harmless the District and its officers, superintendents, trustees, officials, employees, and agents from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs, and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Vendor's performance of the services or its failure to comply with any of its obligations contained in this Agreement.

The Vendor's obligation to defend and indemnify shall not be excused because of the Vendor's inability to evaluate Liability or because the Bidder evaluates Liability and determines that the Vendor is not liable to the claimant. The Vendor must respond within 10 business days to the tender of any claim for defense and indemnity by the District, unless the District has extended this time in writing. If the Vendor fails to accept or reject a tender of defense and indemnity within 10 business days, in addition to any other remedy authorized by law, so much of the money due the Vendor under and by virtue of this Agreement as shall reasonably be considered necessary by the District, may be retained by the District until disposition has been made of the claim or suit for damages, or until the Vendor accepts or rejects the tender of defense, whichever occurs first.

9. PROHIBITED INTERESTS

No member, director, officer, or employee of the District during his/her tenure or for one year thereafter, shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

Contractor covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Contract. Contractor further covenants that in the performance of this Contract Contractor shall employ no person having any such interest.

The District may require Contractor to file an annual Statement of Economic Interest form pursuant to the Political Reform Act of 1974 (California Government Code Section 81000 et seq.)

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10. WAIVER

Failure of any party to exercise any right or option arising out of an alleged or actual breach of this Contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

11. INSURANCE

Depending on the nature of the services being solicited, the District will have certain minimum insurance requirements that the Vendor must meet.

12. APPROVAL

This Agreement is of no force or effect until signed by both parties and approved by the Governing Board of the District. Contractor may not commence performance until such approval has been obtained.

13. AMENDMENT

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved by the Governing Board of the District.

14. ASSIGNMENT

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the District in the form of a formal written amendment.

15. INTEGRATION/ENTIRE AGREEMENT OF PARTIES

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

16. COUNTERPARTS

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

17. CONTRACT PUBLICLY POSTED

This contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

18. PIGGYBACKABLE AGREEMENT

For the term of this Agreement and any mutually agreed extensions, other public agencies/entities may "piggyback" upon this Agreement to the extent authorized by Sections 20118 and 20652 of the California Public Contract Code. Any agency or entity that chooses to piggyback on this Agreement shall be responsible for obtaining approval from its governing body when necessary and shall defend, indemnify and hold harmless the District from any disputes, disagreements or actions which may arise as a result of piggybacking on this Agreement.

19. AUDIT

Contractor agrees that the awarding department of the District, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information

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related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

20. RECYCLING CERTIFICATION

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

21. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC-307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

22. TIMELINESS:

Time is of the essence in this Agreement.

23. COMPENSATION

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

24. ANTITRUST CLAIMS

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been

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injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

25. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

26. UNENFORCEABLE PROVISION

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

27. PRIORITY HIRING CONSIDERATIONS

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

28. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

29. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

Attachment #1 Board By Law 9270

OUSD BB 9270: Conflict of Interest

OAKLAND UNIFIED SCHOOL DISTRICT
Board Bylaw
Board Bylaws

BB 9270
Conflict Of Interest

The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(cf. 9005 - Governance Standards)

Even if a prohibited conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her relative belongs. Relative means an adult who is related to the Board member by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes an individual's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse/registered domestic partner unless the individual is widowed or divorced.

INTRODUCTION

The Oakland Unified School District adopted a Conflict of Interest Code on or about August 28, 1991, pursuant to the requirements of the Political Reform Act of 1974 as amended. (Gov. Code, § 81000 et seq.) In the interest of keeping the Code current with amendments to the Act and to regulations as they occur, the Fair Political Practices Commission has adopted a standard Conflict of Interest Code.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated due to changed circumstances, such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended code shall be submitted to the code reviewing body. (Government Code 87306)

When reviewing and preparing the district's conflict of interest code, the Superintendent or designee shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

(cf. 9320 - Meetings and Notices)

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Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 9222 - Resignation)

Conflict of Interest under the Political Reform Act

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)

A Board member, designated employee, or other person in a designated position makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits the District to any course of action, or enters into any contractual agreement on behalf of the District. (2 CCR 18704)

On a case-by-case basis and upon advice of legal counsel, a Board member may participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Additional Requirements for Boards that Manage Public Investments

Any Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (Government Code 87105; 2 CCR 18707)

1. Publicly identify each financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.

However, the Board member may speak on the issue during the time that the general public speaks on it and may leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion and deliberations of the matter with members of the public.

3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or

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voting on that matter, but the Board member is not required to leave the room during consideration of the consent calendar.

4. If the Board's decision is made during closed session, disclose his/her interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. He/she shall not be present when the item is considered in closed session and shall not knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision.

(cf. 3430 - Investing)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

Conflict of Interest under Government Code 1090 - Financial Interest in a Contract

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract in which he/she has only a "remote interest," as specified in Government Code 1091, if the interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member or district official to enter into the contract. (Government Code 1091)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

Incompatible Offices and Activities

Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the Board member's duties as an officer of the district. (Government Code 1099, 1126)

(cf. 4136/4236/4336 - Nonschool Employment)

Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

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The limitation on gifts does not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation, except when: (Government Code 89506)

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.
2. The travel is provided by a person or agency specified in Government Code 89506, including a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and 2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest/Form 700 as required by law.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

Honoraria

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Government Code 89501, 89502)

The term honorarium does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade, or profession, unless the sole or predominant activity of the business, trade, or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office
35107 School district employees
35230-35240 Corrupt practices, especially:
35233 Prohibitions applicable to members of governing boards
41000-41003 Moneys received by school districts
41015 Investments

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers
1125-1129 Incompatible activities
81000-91014 Political Reform Act of 1974, especially:

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82011 Code reviewing body
82019 Definition, designated employee
82028 Definition, gift
82030 Definition, income
82033 Definition, interest in real property
82034 Definition, investment
87100-87103.6 General prohibitions

87200-87210 Disclosure
87300-87313 Conflict of interest code
87500 Statements of economic interests
89501-89503 Honoraria and gifts
89506 Ethics; travel
91000-91014 Enforcement

PENAL CODE

85-88 Bribes

REVENUE AND TAXATION CODE

203 Taxable and exempt property - colleges

CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, especially:

18700-18707 General prohibitions

18722-18740 Disclosure of interests

18753-18756 Conflict of interest codes

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al.
(4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015)
237 Cal.App.4th 261

Klistoff v. Superior Court, (2007) 157
Cal.App.4th 469

Thorpe v. Long Beach Community College

District, (2000) 83 Cal.App.4th 655

Kunec v. Brea Redevelopment Agency, (1997) 55
Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 Ops.Cal.Atty.Gen. 26 (2009)

92 Ops.Cal.Atty.Gen. 19 (2009)

89 Ops.Cal.Atty.Gen. 217 (2006)

86 Ops.Cal.Atty.Gen. 138(2003)

85 Ops.Cal.Atty.Gen. 60 (2002)

82 Ops.Cal.Atty.Gen. 83 (1999)

81 Ops.Cal.Atty.Gen. 327 (1998)

80 Ops.Cal.Atty.Gen. 320 (1997)

69 Ops.Cal.Atty.Gen. 255 (1986)

68 Ops.Cal.Atty.Gen. 171 (1985)

65 Ops.Cal.Atty.Gen. 606 (1982)

63 Ops.Cal.Atty.Gen. 868 (1980)

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

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

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

10/27/04; 12/16/09A; 3/14/18A

Attachment #2 Board Policy 10000

OUSD BP 10000: Conflict of Interest Code

OAKLAND UNIFIED SCHOOL DISTRICT
CONFLICT OF INTEREST CODE
(Effective March 14, 2018)

INTRODUCTION

The Oakland Unified School District adopted a Conflict of Interest Code on or about August 28, 1991, pursuant to the requirements of the Political Reform Act of 1974 as amended. (Gov. Code, § 81000 et seq.) In the interest of keeping the Code current with amendments to the Act and to regulations as they occur, the Fair Political Practices Commission has adopted a standard Conflict of Interest Code. This standard Code follows.

OAKLAND UNIFIED SCHOOL DISTRICT CONFLICT OF INTEREST CODE

The Political Reform Act of 1974 as amended, Government Code sections 81000 et seq. requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act of 1974 after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Oakland Unified School District ("District").

Pursuant to section 4 of the standard Code, designated employees shall file Statements of Economic Interests (Form 700) with the District who will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) All statements will be retained by the District.

FILING OFFICER

The Conflict of Interest Code Filing Officer for all matters dealing with this Code is Edgar Rakestraw, Executive Assistant, Board of Education, Oakland Unified School District, 1000 Broadway, Suite 680, Oakland, CA 94607 or successor.

REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION

(Title 2, Division 6 of the California Code of Regulations)

Section 18730 Provisions of Conflict of Interest Codes (Gov. Code, §§ 87300, 87302, 89501, 89502 and 89503)

CONFLICT OF INTEREST CODE

Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a Conflict of Interest Code within the meaning of Government Code section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code section 87306 if the terms of

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this regulation are substituted for terms of a Conflict of Interest Code already in effect. A Code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act of 1974 as amended, Government Code sections 81000, et seq. The requirements of a Conflict of Interest Code are in addition to other requirements of the Political Reform Act of 1974 as amended, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

TERMS OF CONFLICT OF INTEREST CODE

The terms of a Conflict of Interest Code amended or adopted and promulgated pursuant to this regulation are as follows:

SECTION 1. DEFINITIONS.

The definitions contained in the Political Reform Act of 1974 as amended, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs., § 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

SECTION 2. DESIGNATED EMPLOYEES.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material affect on economic interests.

SECTION 3. DISCLOSURE CATEGORIES.

This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act of 1974 as amended, Government Code sections 87200, et seq.

In addition, this Code does not establish any disclosure obligation for any designated employees who are designated in a Conflict of Interest Code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the Code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act of 1974 as amended, Government Code section 87200; and
- (C) The filing officer is the same for both agencies. 1

Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her Statement of Economic Interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

SECTION 4. STATEMENTS OF ECONOMIC INTERESTS: PLACE OF FILING.

The Code reviewing body shall instruct all designated employees within its Code to file Statements of Economic

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Interests with the agency filing officer in the agency's conflict of interest code. 2

SECTION 5. STATEMENTS OF ECONOMIC INTERESTS: TIME OF FILING.

- (A) Initial Statements. All designated employees employed by the agency on the effective date of this Code, as originally adopted, promulgated and approved by the Code reviewing body, shall file statements within 30 days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an Initial Statement within 30 days after the effective date of the amendment.
- (B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.
- (C) Annual Statements. All designated employees shall file statements no later than April 1.
- (D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

SECTION 5.5. STATEMENTS FOR PERSONS WHO RESIGN PRIOR TO ASSUMING OFFICE.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an Assuming Office Statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an Assuming or Leaving Office Statement.

Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

- (A) File a written resignation with the appointing power; and
- (B) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

SECTION 6. CONTENTS OF AND PERIOD COVERED BY STATEMENTS OF ECONOMIC INTERESTS.

- (A) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code and income received during the 12 months prior to the effective date of the Code.
- (B) Contents of Assuming Office Statements. Assuming Office Statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.
- (C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first Annual Statement shall begin on the effective date of the Code or the date of assuming office whichever is later.
- (D) Contents of Leaving Office Statements. Leaving Office Statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

SECTION 7. MANNER OF REPORTING.

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Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investments and Real Property Disclosure. When an investment or an interest in real property³ is required to be reported⁴ the statement shall contain the following:

- (1) A statement of the nature of the investment or interest;
- (2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
- (3) The address or other precise location of the real property;
- (4) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported⁵ the statement shall contain:

- (1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
- (2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
- (3) A description of the consideration, if any, for which the income was received;
- (4) In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
- (5) In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported⁶ the statement shall contain:

- (1) The name, address, and a general description of the business activity of the business entity;
- (2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or Leaving Office Statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

SECTION 8. PROHIBITION ON RECEIPT OF HONORARIA.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

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SECTION 8.1. PROHIBITION ON RECEIPT OF GIFTS IN EXCESS OF \$470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than four hundred seventy dollars (\$470) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

SECTION 8.2. LOANS TO PUBLIC OFFICIALS.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of section 4 of Article VII of the Constitution, shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

(1) Loans made to the campaign committee of an elected officer or candidate for elective office.

(2) Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(3) Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

(4) Loans made, or offered in writing, before January 1, 1998.

SECTION 8.3. LOAN TERMS.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five

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hundred (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

(1) Loans made to the campaign committee of the elected officer.

(2) Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(3) Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

SECTION 8.4. PERSONAL LOANS.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

(1) If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

(2) If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

(1) A loan made to the campaign committee of an elected officer or a candidate for elective office.

(2) A loan that would otherwise not be a gift as defined in this title.

(3) A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

(4) A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

(5) A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

SECTION 9. DISQUALIFICATION.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

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- (D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating four hundred forty dollars (\$440) or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

SECTION 9.3. LEGALLY REQUIRED PARTICIPATION.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

SECTION 9.5. DISQUALIFICATION OF STATE OFFICERS AND EMPLOYEES,

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- (A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- (B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

SECTION 10. DISCLOSURE OF DISQUALIFYING INTEREST.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

SECTION 11. ASSISTANCE OF THE COMMISSION AND COUNSEL.

Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

SECTION 12. VIOLATIONS.

This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act of 1974 as amended, Government Code sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

10/1/10; 1/15/14A; 2/25/15A; 2/24/16A; 12/14/16A; 3/14/18A

1 Designated employees who are required to file Statements of Economic Interests under any other agency's

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Conflict of Interest Code, or under article 2 for a different jurisdiction, may expand their Statement of Economic Interests to cover reportable interests in both jurisdictions, and file copies of this expanded Statement with both entities in lieu of filing separate and distinct Statements, provided that each copy of such expanded Statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

2 See Government Code section 81010 and Title 2, California Code of Regulations, section 18115 for the duties of filing officer and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

3 For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

4 Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

5 A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

6 Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.
