June 5, 2006

TO: Campus Principals and Department Heads  
FROM: Jack Elrod, General Counsel  
SUBJECT: Contract/P1-C Issues: Quick Reference Guide

The Office of Legal Services provides reference guides on topics of interest to district stakeholders. The following Contract / P1-C Issues: Quick Reference Guide is designed to provide an overview of contract and P1-C issues and is not a substitute for legal advice. Questions about specific contracts and legal questions should be directed to my attention for assignment to the appropriate attorney.

**Contract / P1-C Issues: Quick Reference Guide**

At some point this year, your campus/department will need to either buy goods and/or secure consultants to assist with the provision of training or other services for the district. State laws and Board Policies control how goods and services may be procured.

**What is a contract?**

A contract is an agreement between two or more persons or entities with the following elements:
1. an offer;
2. an acceptance of that offer which results in a meeting of the minds;
3. a promise to perform;
4. a valuable consideration (which can be a promise or payment in some form);
5. a time or event when performance must be made (meet commitments); and
6. terms and conditions for performance, including fulfilling promises.

Examples of contracts include but are not limited to:
1. Interlocal Agreements (contracts entered into with other school districts, local governments, and agencies of the state);
2. Memorandums of Understanding when all necessary contract terms are included;
3. Price Agreements, also referred to as Unit Price Agreements, (contracts are used to secure large quantity of goods and/or services); and
4. Professional Services Agreement.

**What is a P1-C?**

A P1-C is a short-form contract to be used if the amount is less than $10,000. If the amount is $10,000 or above or the contract is for more than one year, the P1-C is not the contract but rather serves as the documentation indicating budgetary authority.
What does this mean for you?

1. Plan ahead. Most contracts will require a review beyond the campus/department level. You should allow sufficient time for this process to happen before the proposed start of the contract.

2. Learn the rules. All school district contracts valued at $25,000 or more in the aggregate for each 12-month period are required to conform to state purchasing laws. There are also local rules and administrative procedures that are in place. The relevant Board Policies are CH and CE. The Purchasing Department is responsible for procuring goods and services for DISD according to the state and local purchasing guidelines. Unless state law or Board policy specifically requires the Board to make or approve a purchase, authorized DISD employees in charge of a department or school budget may purchase items included in their approved budget, in accordance with administrative procedures and Board Policies. Check with your supervisor to learn the specific procedures that have been developed for your area.

3. Vendors are not authorized to begin services until the final version of the contract has been approved and a purchase order has been issued. DISD is not obligated to honor any agreement or pay for services until a purchase order is issued.

4. The Board must approve all purchase orders for goods and/or services involving more than $50,000 prior to the purchase of the goods and/or services. This is true whether there is a single contract with a vendor for $50,000 or more or multiple smaller contracts with one vendor that, in the aggregate, total $50,000 or more. Remember, the Board generally meets only once a month. If you have a contract that will require Board approval, you must plan ahead to allow sufficient time for Board approval before the start of the contract.

5. Service contracts less than $10,000, whose services will be fully delivered within the same fiscal year, must use a completed (including the contractor's signature prior to the delivery of the contracted services or products) P1-C.

6. Contracts in excess of $9,999.99 and/or multyear contracts must use a completed P1-C together with a written contract document. These contracts also require the approval of the Office of Legal Services. If the vendor does not provide a written contract, you may use DISD’s Standard Professional Services Contract. A copy may be obtained from the Purchasing Department-Contract Services.

The following issues arise on all contracts regardless of the type of contract:

1. You need to identify who the parties to the contract are. Is the vendor a sole source? If so, a sole source affidavit needs to be included with the contract. A blank affidavit may be obtained from the Purchasing Department.

2. What services will be performed under the contract? The services should be described with specificity in the contract. General language such as “for services rendered” is not an acceptable description. If you are using the Standard Professional Services Contract, you will describe the services in Exhibit A.

3. You will need to determine the length of the contract. When does the contract begin? When does it end? If the term goes beyond one year, is the termination due to non-appropriation of funds language included?

4. How much is the vendor due to be paid? Payment is to be made upon completion of services or in accordance with District policy and state law.

5. Has the vendor inserted indemnification and/or insurance requirements in the contract? The District cannot agree to indemnify the contractor. If the vendor includes this language, it must be deleted from the contract.

6. Has the vendor agreed to hold District harmless for vendor's errors, omissions, and negligence? If so, has contractor secured insurance to accomplish this purpose?
7. Arbitration. DISD cannot agree to binding, mandatory arbitration. If this language is included in the contract, it must be deleted.
8. Enforcement of contract. The contract must be governed by the laws of Texas. Venue must be in Dallas County, Texas.
9. Payment of taxes. DISD is not required to pay sales and use taxes, consistent with state law. Contact the Purchasing Department for a copy of DISD's tax-exempt certificate.
10. Evaluation. There must be some objective (measurable) criteria and language that provides an effective method of evaluation that could ultimately lead to termination or continuation of contract.
11. Signatures: The vendor must sign the contract document prior to delivery of the product and/or services.
12. Criminal background check. In contracts that require direct services to children or requires the vendor to perform the contracted services on school property or other location where students are regularly present, the contractor must provide a criminal record check of all personnel who will render the services under the contract.
13. Student information. If the vendor will work with students and/or have access to student information, the contract must expressly require the vendor to comply with federal and state laws protecting the confidentiality of student information.

How do you get a document reviewed by Legal?

P1-Cs and/or contracts $10,000 and above, multiyear agreements, grant applications and other legal documents require legal review. All documents needing legal review must be logged into the legal department in person. The enclosed Legal contract form will need to be filled out and submitted with the contract. The document will be given to the General Counsel who will assign an attorney to review the document. A minimum of five (5) working days should be allotted for legal review.

All appropriate signatures on the P1-C should be obtained prior to submission to Legal. All P1-Cs require a minimum of three signatures, one of which must be the appropriate Deputy Superintendent. The vendor’s signature must also be obtained prior to legal review. If the vendor is out-of-town and a faxed copy of the P1-C with the vendor’s signature is submitted as backup documentation, the vendor must sign the front page of the P1-C as well as a copy of the back page of the P1-C.

P1-Cs over $10,000 also require a written contract. The only signature on the written contract accompanying the P1-C should be the vendor’s signature. The department and/or principal should not sign the written contract prior to legal and, if necessary, Board approval. The contract may be a contract written by the vendor or it may be the district’s Standard Professional Services Contract. A copy of the standard contract may be obtained from Contract Services in the Purchasing Department at 972-925-4100.

Documents requiring the Superintendent’s signature should be submitted with the blue submittal form and all appropriate signatures, including the signature of the designated Deputy Superintendent, as well as all necessary backup documentation.

Documents requiring Board approval must have the appropriate signature page with signature space for the Board President and Board Secretary. It is a good practice to include a draft of the Board document with the contract when you submit the contract to Legal for approval. As a reminder, the Board must approve all purchase orders for goods and/or services for $50,000 or more (or an aggregate total of $50,000 or more) prior to the purchase of the goods and/or services.
Attached are two checklists, the P1-C Checklist and the End-User Contract Checklist, to assist in preparing contracts to submit to Legal. If you have additional questions or would like to schedule an appointment with an attorney to discuss a contract issue, please contact the Office of Legal Services at (972) 925-3250.

Enclosures:  P1-C Checklist
            End-User Contract Checklist