

USE OF VOLUNTEERS FOR FACILITIES PROJECTS

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INTRODUCTION

- Use of volunteers on facility projects
 - Legal mechanisms available
 - Who is doing or paying for the work
 - Provisions to safeguard school district
 - Issues frequently encountered
 - Use of solicited funds



LEGAL MECHANISMS

- Acceptance of Gift.
 - Education Code section 41032 authorizes the School Board to accept gifts and donations for the benefit of any school, subject to the conditions and restrictions that the School Board may require.



LEGAL MECHANISMS

- Lease requiring construction of facility.
 - Education Code section 17406 provides:
"(a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year . . . any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. . . ."



LEGAL MECHANISMS

- Lease of historic building
 - Education Code section 17482 authorizes the governing board, subject to approval by the county board of supervisors, to lease any building possessing historic value to a nonprofit tax-exempt community or civic organization for the purpose of preserving and utilizing the historic building for the benefit of the community.



WHO IS DOING OR PAYING FOR THE WORK?

- District funds/competitive bid
- Force account
- Volunteers



WHO IS DOING OR PAYING FOR THE WORK?

- Force account
 - Public Contract Code section 20114(a) states that day labor or force account may be used whenever the total number of hours on the job does not exceed 350 hours.
 - District Unions may argue that instead of volunteers must use classified personnel via force account provisions
 - Collective bargaining agreements



WHO IS DOING OR PAYING FOR THE WORK?

- In accordance with Education Code section 45103.1, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all specified conditions met



FORCE ACCOUNT

- Public Contract Code section 20114(a) provides that day labor or force account may be used whenever the total number of hours on the job does not exceed 350 hours.
 - A governing board may make repairs, alterations, additions or painting or repainting or decorating upon school buildings, repair or build apparatus or equipment, make improvements on school grounds and erect new buildings and perform maintenance by day labor or by force account, whenever the total number of hours on the job does not exceed 350 hours. Day labor includes the use of maintenance personnel employed on a permanent or temporary basis.



FORCE ACCOUNT

- What are the estimated man hours to complete a particular project? For example, for a painting project, this estimate would be based upon the size of each room and how many hours it would take for each room.
- It is unlawful for a district to split or separate a project such as a painting project into smaller work orders or projects for the purpose of evading the provisions of the Public Contract Code. (Public Contract Code section 20116.) If not met, the district must submit the project out to bid. For example, 1/2 volunteer and 1/2 force account.



FORCE ACCOUNT - ALTERNATE

- Uniform construction cost accounting procedures set forth commencing with Public Contract Code section 22030. Before these alternative procedures can be used, the governing board of the District must adopt a resolution electing to be subject to the procedures.
- The program also provides three different bidding procedures:
 - Projects of \$25,000 or less may be performed by District employees, force account, by negotiated contract, or by purchase order.
 - Projects of \$100,000 or less may be let to contract by informal procedures.
 - Projects of \$100,000 or more must be let to contract by formal bidding procedures



PROVISIONS TO SAFEGUARD DISTRICT

- Project will be owned by the District.
- Project must comply with the California Environmental Quality Act (“CEQA”)
- Security for the construction of the facility to ensure its completion. District could require insurance provisions (examples below), hold harmless and indemnity clauses, and if appropriate, performance bonds provide such protection.
- Adequate financial resources of the donor to design and build, and for the District to maintain and operate the facility, after the date of completion.



PROVISIONS TO SAFEGUARD DISTRICT

- Require that the plans and specifications for the project be constructed in compliance with all applicable governmental design standards and shall utilize private sector design and construction firms to design and construct the infrastructure facilities.
- Provision requiring the donor to maintain insurance with those coverages and in those amounts that the district deems appropriate. Sample insurance provisions could include:
 - Contractor's Insurance
 - Coverages, Subcontractor, Subconsultant Insurance.



PROVISIONS TO SAFEGUARD DISTRICT

- Types of insurance
 - Commercial General Liability and Property Insurance
 - Auto Liability insurance
 - Professional Liability insurance (only to be provided by Subconsultants or Subcontractors performing professional services)
 - Excess Liability insurance
- Evidence of Insurance
- Builder's Risk "All-Risk" Insurance.
- Policy Requirements and Endorsements.



PROVISIONS TO SAFEGUARD DISTRICT

- All volunteer facilities projects should have approximate start and completion dates and should be approved by the principal in advance.
- Projects approved by the principal shall also be approved in advance by the Superintendent or designee if they involve certain complex facility work



PROVISIONS TO SAFEGUARD DISTRICT

- Superintendent or designee should ensure that volunteers possess the appropriate license and/or have sufficient expertise appropriate to the project. He/she should also ensure that such projects comply with building and safety codes and other applicable laws and collective bargaining agreements. District should provide on-site assistance and supervision for such projects as necessary. Projects should be inspected upon completion to ensure that the work was done satisfactorily.



ISSUES

- Scope of workshop limited to use of volunteers for facility projects
 - no students (fingerprinting)
- General
 - Simple Projects v Complex Projects
 - No state funding (labor compliance)



ISSUES – TYPES OF FACILITIES

- Alterations, additions or repairs to buildings and grounds
- Construction involving wall or roof penetration, drilling or nailing
- Structural modifications
- Electrical, electronic, plumbing, or heating and cooling work
- Painting
- Installation of carpet
- Installation of playground equipment and benches
- Installation of sprinkler systems
- Paving
- Installation of marquees and signs
- Tree planting, pruning or removal
- Installation of shade shelter



USE OF SOLICITED FUNDS

- Education Code section 35182.5(a)(1) provides that a school district may not enter into a contract that grants exclusive advertising unless procedures followed
- For a district to accept a gift on the condition that a commercial name be placed on a public facility, a district should consider adopting a policy to that effect in accordance with Education Code section 41032.
- Pursuant to Education Code 51521, prior written approval is required for sales or solicitations whenever any portion of the funds raised is to be applied to the costs of the fund-raiser or to the costs of merchandise sold. Such approval is not required if the total proceeds of a solicitation are to be delivered to the school without deductions for expenses.



USE OF SOLICITED FUNDS

- Nonprofit organizations and charities conducting fund-raising activities are subject to various state laws regarding those activities.
- Business and Professions Code 17510.2 and 17510.3 specify that solicitations made by nonprofit community or educational organizations must comply with the state disclosure laws.
- Business and Professions Code 17510.3 requires volunteers over 18 years old to present potential donors or buyers with information, including the purpose of the solicitation and the address from which further information about revenues and administrative expenses may be obtained.
- Penal Code 320.5 provides that, prior to conducting a raffle, a nonprofit organization, unless specifically exempted, must first register with the Attorney General's Registry of Charitable Organizations and file financial disclosure reports on each raffle event



SUMMARY

- Use of volunteers on facility projects
 - Use correct legal mechanism
 - Analyze who is doing or paying for the work
 - Use appropriate provisions to safeguard school district
 - Get Board approval for solicited funds

