



## Contract Provisions

The Purchasing Office at SMC has created this checklist to assist District employees with key points to consider when presenting contracts for final processing. The checklist outlines important provisions that should be included in most contracts. It also provides examples of model provisions and tips to protect the District against risk.

1. **Party Names:** Is each party clearly identified by official legal name?

*Tip:* SMC should be identified by its legal name: "Santa Monica College," as opposed to the department, center or program name.

2. **Agreement and Consideration:** To indicate that the contract is binding, is there specific language regarding agreement and consideration?

*Example:* "For good and valuable consideration, the parties agree as follows:"

3. **Obligations:** Is there a detailed description of each party's obligations, including the goods/services/facilities to be provided and a timetable for delivery/completion?

*Tip:* A detailed timetable with clear deliverables for each phase is essential for successfully managing the business relationship.

4. **Payment:** If applicable, do the payment terms adequately protect SMC?

*Tip:* Consider dividing payments into sub-payments tied to key milestones. Advance deposit payments should not exceed 25% of the total contract amount. A significant portion of the contract amount, or preferably the balance, should be withheld until after delivery/completion to ensure complete satisfaction.

5. **Duration:** Is the contract's duration specified?

*Examples:* Expiration upon delivery/completion; one-year; renewable by agreement; etc.

*Tip:* Automatic renewal provisions should be avoided.

6. **Termination:** Does the contract include a termination provision that adequately protects SMC?

*Tip:* Preferably, SMC should be able to terminate the contract with no obligation or penalty on 30-days notice or if delivery/completion is not satisfactory.



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7. **Insurance:** Is SMC's standard insurance provision included?

*Tip:* Parties that come on District property to perform work must meet SMC's minimum liability insurance requirements throughout the project. Please contact the Office of Risk Management if you have any questions about SMC's insurance requirements.

8. **Indemnification:** Is SMC's standard indemnification provision included?

*Tip:* In almost all circumstances, the other party should agree to defend and indemnify SMC and its employees against liability for personal injury or property damage arising out of the party's performance under the contract. A "mutual" or "cross" indemnification provision is virtually meaningless in practice and should generally be avoided. Indemnification obligations are complicated provisions with legal ramifications, and therefore, you are strongly encouraged to contact Purchasing so the matter can be escalated to General Counsel.

9. **Limitation of Liability:** If the contract includes a provision limiting the other party's liability, does it adequately protect SMC?

*Tip:* In many (if not most) circumstances, the answer is "no." The other party will often try to exclude "consequential damages" and/or limit its liability to the total amount of the contract or specific types of damages. Because provisions limiting the other party's liability often do not protect SMC, they should generally be avoided. Please contact the Purchasing Office if you have any questions about liability limitation provisions. (See also "Warranty" below.)

10. **Governing Law:** Is the governing law of the contract specified?

*Example:* SMC's standard governing law provision.

*Tip:* The contract should be governed by California law. The venue and jurisdiction for any disputes should be Los Angeles County, Los Angeles.

11. **Dispute Resolution:** If the contract includes a provision requiring alternative dispute resolution (*e.g.*, mediation and/or arbitration), does it adequately protect SMC?

*Tip:* Alternative dispute resolution provisions are not necessarily beneficial. SMC's strong preference is to remove these provisions so that any dispute arising out of a contract may be resolved in a court with jurisdiction over the dispute. In most contracts, California in the County of Los Angeles County should be identified as the venue and jurisdiction for disputes (see "Governing Law" above). In the limited circumstances where it would be appropriate to include a dispute resolution provision, SMC would be amenable to mediation but not to arbitration.



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12. **Warranty:** Does the contract adequately protect SMC in the event the other party does not perform satisfactorily?

*Examples:*

If goods do not work properly within 90-days of delivery, reserve the right to require goods be fixed or to return the goods and receive a full refund.

If performance found to be unsatisfactory within 90-days of completion, reserve the right to require services be improved or to receive a full refund.

Reserve the right to receive a price reduction for late delivery/completion or poor performance.

Reserve the right to recover significant, predictable losses resulting from other party's poor performance (e.g., costs of finding replacement goods or services). Note that such a provision may conflict with a limitation of liability provision, which requires careful review (see "Limitation of Liability" above).

*Tip:* Strongly-worded warranty provisions will motivate better performance and protect SMC if performance is substandard. Think through what problems could arise and how you would want to resolve them and then try to include provisions in the contract requiring that resolution. Please contact the Purchasing Department if you have any questions about warranty provisions.

13. **Intellectual Property Ownership:** Does the contract specify who owns any intellectual property developed under the contract?

*Example:* SMC's standard intellectual property ownership provision.

*Tip:* Generally, the contract should provide that all intellectual property rights arising out of the contract will belong to SMC and will be deemed works-for-hire under federal copyright law.

14. **Confidentiality:** Is SMC's standard confidential information provision included?

*Tip:* If the contract involves SMC's disclosure of confidential or not publicly available information, including trade secrets and personally identifiable information about persons (living or dead), the other party must agree to protect the information, use it for the limited purposes of the contract, and destroy it upon termination of the contract. In some contracts, SMC will be required to protect the other party's confidential information as well. If you agree to a provision that requires protection of the other party's confidential information, it is incumbent upon you to make sure that processes are in place in your department or office, and at SMC generally, to keep the other party's information confidential. Please contact General Counsel if you have any questions about confidentiality provisions.



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15. **Independent Contractor:** Is there a provision stating that the other party is an independent contractor and not an employee of SMC?

*Example:* SMC's standard independent contractor provision.

16. **Signature Lines:** Is there a place for each party's authorized representative to sign the contract?

*Tip:* It is helpful to include the name, title, address, phone number, fax number and e-mail address of the person signing the contract under each signature line.

**NOTE:** This checklist is for your general information and education only and does not constitute legal advice. Please feel free to contact General Counsel with specific questions regarding contract law as it applies to your District contracts.



## Contract Checklist

Service Agreements, Public Works and Consultant Services

	In Compliance	Not Applicable
1. Have at least two copies of the contract been prepared?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have the parties to the contract been designated appropriately? Are signatures, addresses and title completed?	<input type="checkbox"/>	<input type="checkbox"/>
<b>3. Is the contract consistent with bid documents?</b>	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the IRS, Federal I.D. or the Social Security number been obtained if the contractor is an individual or partnership? Has the Vendor Data Record been completed?	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. Is the Contractor's Statement of Compliance included in the bid form?</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>6. Have any changes, corrections, alterations, or strike over been initiated by both parties?</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>7. If the contract is for more than one fiscal year, is there a non-appropriation clause included that states the agreement is "subject to availability of funds?"</b>	<input type="checkbox"/>	<input type="checkbox"/>
8. On contracts over \$10,000, has the provision that the contract is "subject to audit" been incorporated into the agreement?	<input type="checkbox"/>	<input type="checkbox"/>
9. Payment for services:		
a. Are payments to be made in arrears?	<input type="checkbox"/>	<input type="checkbox"/>
b. Have basis, time, and method of payment been stated?	<input type="checkbox"/>	<input type="checkbox"/>
c. Has the maximum liability under the contract been specified (lump sum or amount not to exceed)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Are commencement and termination dates correctly expressed? Is there a clause authorizing SMC to terminate the contract before the end of the contract period (on Multi-year contracts)?	<input type="checkbox"/>	<input type="checkbox"/>
11. Is the location of the services to be performed clearly defined?	<input type="checkbox"/>	<input type="checkbox"/>
<b>12. Is the non-collusion affidavit and labor compliance included on all contracts resulting from a formal bid?</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>13. Has the contract avoided unspecified contingent liability clauses (hold harmless and indemnification provisions favoring only the contractor, a non-quantifiable escalation clause, and any arbitration clause)?</b>	<input type="checkbox"/>	<input type="checkbox"/>



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### 14. Consulting Agreement:

- a. Has potential conflict of interest been explored?
- b. Has a dispute clause been included?

### 15. **Insurance Requirements**

- a. Has a certificate been included for hazardous nature contracts?
- b. Does endorsement contain all required provisions?
- c. Is State property adequately protected?

### 16. **Amending an Existing Contract**

- a. Is amendment dated on or before effective date of the change?
- b. Have copies of the original agreement and prior amendment face pages been included?

### 17. **Public Works Contract Additional Requirements**

- a. Is date of contract consistent with bid opening and date of bonds?
- b. Are exhibits properly paged, identified, incorporated into the contract and physically attached?
- c. Do copies of advertisements, prevailing wage rates accompany the contract?
- d. Have required bonds (bid-payment-performance) been included and signed by contractor? Are the bond agents authorized for business in California?
- e. Does bond include power of attorney for surety certified as of the date bond is executed? (properly notarized and acknowledgment, attached to the bond)
- f. Is payment bond dated on or after date of agreement?
- g. Insurance – is evidence of insurance naming the District as additional insured?
- h. Designated material must list any brand names preferred followed by “or equal.”

**NOTE:** All contract checklist item in **bold** are typically handled by Purchasing