

**Action/Information Item**

***California Student Aid Commission***

Consideration of A Commission Policy, Pursuant to Title 34, Code of Federal Regulations, Section 682.401(b)(16), to Supervise the Contracts of the Commission's Auxiliary Organization (EDFUND)

---

**Recommendation:**

Approve the proposed Commission General Policy on EDFUND Procurement Contracts.

**Background**

Several contract issues involving EDFUND have recently arisen that identify the need for the Commission to articulate a Commission policy that will govern EDFUND contracts.

EDFUND issued a request for proposal and entered into a contract for up to \$5 million for Federal Family Education Loan Program (FFEL Program) services without first informing, and receiving approval from, the Commission or the EDFUND Board.

As discussed in Tab 3, Update on the Lender of Last Resort Program, EDFUND signed a \$5-million contract for certain administrative and operational services related to the Lender of Last Resort Program (LLR), without the knowledge of the Commission, Commission staff and the EDFUND Board of Directors. The LLR is part of the FFEL Program.

EDFUND issued a request for proposal for these services on May 29, 2008. At the June 27, 2008, Commission meeting, the EDFUND President did not inform the Commission about the request for proposal, but rather described circumstances under which such a contract would likely not be required. On July 23, 2008, however, EDFUND notified Commission staff that they had a fully executed contract for loan origination and servicing to satisfy requirements imposed by the FFEL Program on student loan guarantee agencies to provide services as a lender of last resort.

The Commission had not reviewed or approved the contract and had not authorized EDFUND to enter into the contract. The EDFUND Board had similarly not reviewed, approved, or authorized this contract.

EDFUND issued a request for proposal, and may have entered into a contract, for an advocacy campaign for guarantors without informing and receiving approval from the Commission.

As discussed in Tab 4, Consideration of the Rescission of EDFUND RFP #07-112..., EDFUND issued a request for proposal for an advocacy campaign that reflected a policy position the Commission had not considered or adopted. As specified in Tab 4,

EDFUND's action was inconsistent with Commission policies governing external communications. EDFUND's actions were also inconsistent with federal law, which requires the state student loan guarantee agency to set policies for FFEL Program administration, and with state law requiring the Commission, as the state student loan guarantee agency, to maintain policy leadership.

In addition, EDFUND did not inform the Commission that it issued the request for proposal. Rather, Commission staff discovered a copy of the request for proposal in a stack of documents relating to a different contract. The copy of the request for proposal was inadvertently sent to Commission staff.

EDFUND entered into a \$93,000 contract for coffee services to be provided free of charge to EDFUND employees.

EDFUND executed contract number 8795-07-040a to amend a previously existing contract with a service provider to increase the total amount to \$93,000. The service provider is to furnish a selection of gourmet coffee, tea and hot chocolate, as well as additional products such as sugar, cream and stir sticks on demand.

Commission staff has been informed that the coffee will be provided free of charge to the EDFUND staff.

The Commission created EDFUND as a nonprofit corporation and expressly provided that EDFUND was organized, and at all times is to be operated exclusively for the benefit of, to perform the functions of, and to carry out the purposes of the Commission. Payments for EDFUND contracts come from State money paid by the Commission to EDFUND for approved expenditures. The Commission is the sole source of funding by which EDFUND pays its expenditures.

Thus, EDFUND contract expenditures are paid from State funds.

The Commission has not approved a policy that allows State funds to be spent for a contract that provides benefits, such as coffee, free of charge to EDFUND employees.

EDFUND entered into a contract for up to \$65,000 for creative design services to "rebrand" EDFUND, despite the potential sale of state student loan guarantee program assets, including EDFUND, to a buyer.

Despite the fact that Chapter 182 of the Statutes of 2007 (SB 89) authorized the Department of Finance to sell the State's student loan guarantee program assets, including EDFUND, or enter into an alternative arrangement, EDFUND issued RFP #07-027 on January 9, 2008 for Brand Refinement and Web Design.

On May 15, 2008, as the Governor's representatives and the Conference Committee of the Legislature were considering extending the authority to sell student loan guarantee program assets to January 2011, EDFUND entered into Contract # 8983-07-080 with a service provider for those brand refinement and web design services.

EDFUND has since instituted its new logo with its tag line "Guaranteeing dreams."

The Commission staff was not informed of, nor was it aware of, EDFUND's intent to rebrand itself or of RFP #07-027 and the corresponding contract until after the contract had been signed.

As noted above, State funds pay for EDFUND expenditures. EDFUND has no other source of revenue to support itself.

Commission staff questions the need for EDFUND to spend State funds to rebrand itself while the State is attempting to sell its student loan guarantee program assets, which may include EDFUND. If EDFUND is included in the sale, the buyer may have its own plans for branding EDFUND. Furthermore, Commission staff also has concerns that the use of the "Guaranteeing Dreams" by an entity other than a FFEL Program guarantee agency might be misleading.

Finally, rather than EDFUND spending State funds on this contract to rebrand itself, the Commission could have more appropriately directed the funds to be used for more important and more timely purposes, such as promoting access to postsecondary education by providing information to students and their families on paying for college.

## **Discussion**

The United States Department of Education has designated the Commission as the state student loan guarantee agency for California under the Federal Family Education Loan Program (FFEL Program). Federal law authorizes a state student loan guarantee agency to administer the FFEL Program through a nonprofit organization, but explicitly requires the guarantee agency to have and to exercise full authority over, and have accountability for, the nonprofit organization, including the setting of policies for the FFEL Program administration:

In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(34 CFR §682.401(b)(16); emphasis added.)

To this end, California law requires the Commission to maintain its responsibility for financial aid program administration and policy leadership if it administers the FFEL Program through an auxiliary organization. (§ 69522(c)(1).)

The Bureau of State Audits has noted: "As a guaranty agency for the FFELP, the CSAC [Commission] has a fiduciary responsibility to the state and federal government, and to the taxpayers to ensure that program funds are spent economically and in accordance with laws and regulations." (Bureau of State Audits, Investigative Report: Conflicts of Interest and Mismanagement of Federal and State Funds at the California Student Aid Commission, #I960207 (1998).)

The sole current method by which the Commission monitors EDFUND contracts is through a monthly list of new contracts that EDFUND provides to Commission staff. There is no current method by which Commission staff is notified of requests for proposals to

be issued and contracts that are pending but not yet finalized. In addition, Commission staff has been told that there is no list of all EDFUND contracts currently in effect.

However, information provided by EDFUND staff about EDFUND contracts extending into 2008-09 indicates a total contract amount of nearly \$130,000,000.

Commission staff proposes that the Commission adopt a Commission Policy governing EDFUND Procurement and Contracts. The proposed policy is included with this Tab and is based on EDFUND policies with significant differences:

- The proposed policy includes a policy statement reflecting EDFUND's need to comply with its charitable purpose of operating exclusively for the benefit of the Commission. Further, the policy statement reflects a desire that procurement and contracts comply with the intent of State contract procedures where possible.
- The proposed policy requires EDFUND's Legal Department, the Commission's General Counsel and the Federal Policy and Programs Division to review all EDFUND requests for proposals before they are issued.
- The proposed policy requires all purchase orders and contracts in excess of \$500,000 to be approved by the EDFUND Board before any expense or liability is incurred. EDFUND's contract policy had previously authorized the EDFUND President to sign any contract that has been competitively bid, without limit and without approval by the EDFUND Board. Commission staff has recently been informed that EDFUND staff has instituted a revised policy authorizing the EDFUND President to sign any contract that has been competitively bid up to \$1 million without Board approval.
- The proposed policy requires the EDFUND Legal Department and Commission General Counsel to review any EDFUND contract that would obligate EDFUND to indemnify a party or pay attorneys fees arising from litigation over a breach of the contract.

SB 89 requires the Department of Finance to approve any Commission action affecting the state student loan guarantee program assets before it takes effect, to ensure that the value of those assets is preserved.

The proposed policy preserves the value of those assets by increasing the accountability of the Commission's contractor, EDFUND, for the way it spends State funds, and by enhancing responsible oversight of EDFUND in order to ensure that State funds are spent appropriately. This is appropriate because State funds are the exclusive source of payment for EDFUND contracts.

**Responsible Persons:** Ed Emerson, Chief  
Federal Policy and Programs Division

Keri Tippins  
General Counsel

Janet McDuffie, Chief  
Administration and External Affairs Division

**DRAFT**



## **GENERAL POLICY**

**SUBJECT:**  
EdFUND Procurement/Contracts

**POLICY NUMBER:**  
**018**

**EFFECTIVE DATE:**

APPROVED BY COMMISSION SECRETARY

### **POLICY STATEMENT**

**EdFund shall acquire goods and services in the best interests of EdFund in accordance with prudent business practices and this policy. The best interests of EdFund are defined by its charitable purposes, which includes operating exclusively for the benefit of the California Student Aid Commission. Thus, although EdFund is a non-profit public benefit corporation and not subject to the contracting policies of the State, it is the policy of the Commission that, where possible, all procurements/contracts shall be in compliance with the intent of the standards and guidelines established in the State Administrative Manual and the Public Contract Code.**

### **GENERAL GUIDELINES**

All expenditures will be in accordance with applicable federal and state law and/or regulations for the FFEL program. EdFUND shall avoid purchasing from vendors for whom there may be a conflict of interest as stated in California Education Code §69525 (c, d, and e), all other conflicts will be noted on the Contract requisition form in accordance with Policy 02.

Procurement activities not with the scope of this policy include personnel recruitment, relocation, travel, training, and business expense reimbursements.

Failure to comply with this policy may result in voiding the contract and/or disciplinary actions for the involved employee, up to and including termination.

### **Definition of Terms**

For purposes of this policy, the following terms are defined as set forth:

**DRAFT**

- Purchase Order: A numbered, traceable document generated by the EdFund Business Operations Department that allows or creates a financial obligation for EDFUND evidencing the existence of all other documents required to support a procurement. Contains standard term and conditions for managing transaction risk with vendors.
- Contract: A legally binding agreement between EDFUND and an outside party to acquire or provide goods, and/or services, which contains customized terms and conditions for managing transaction risk with vendors.
- Goods: All items *not* constituting personal services, agency/representation, or employment services. However, short-term rental of training, exhibit or advertising space, agreements establishing business address/operation locations, and training courses are considered goods.
- Request for Proposal (RFP): Document sent by EDFUND to potential vendors soliciting proposals for specific services and/or goods. The vendor submits a proposal describing how it will provide the required services. All RFP's must be reviewed by the EdFund Legal Department and CSAC General Counsel/Federal Policy and Program Division staff prior to issuance.
- Bid: A potential vendor's cost reply to a solicitation for goods or services.
- Competitive Bidding: A process used to obtain a minimum of three bids or price quotes for a project or service. Goods or services are not obtained solely on "low bid." Price is only one factor in deciding with whom to contract. Other value-added criteria in contract/purchase order decisions include quality, service, experience, timeliness, reputation, etc.
- Informal Bid: Solicitations requesting vendor proposals either verbally or by telephone. Quotes must be recorded on the Contractor/Vendor Bid Form (Attachment 1) that evidences the person contacted, time, date, location, quantity, quality and price discussed.
- Sole Source: A procurement or contract for goods and/or services where only one vendor is given the opportunity to bid for the specified goods and/or services because of existing business requirements or limited sources.
- Single Source: A procurement or contract for goods and/or services where only a single business enterprise is able to provide the specified goods and/or services.

**PROCUREMENT REQUIREMENTS**

Goods and/or services may be procured by one of the following methods:

- **Competitive Bid** – The Contract Requisition form or the Purchase Requisition form or the Purchase requisition form must be accompanied by a justification

**DRAFT**

memorandum or bid process and cost analysis approved by the requesting department's AVP or above. The bid process and a cost analysis should, at a minimum, include a summary of all bids obtained (who, what and when) an explanation why the particular vendor was selected, and a summary of the benefits expected to be received. To complete an informal bid process, a completed Contractor/Vendor Bid Form must be completed and submitted with the Contract Requisition and a bid and cost analysis.

- **Sole and Single Source Procurement** – A sole source or single source justification memorandum approved by the requesting department's divisional VP, must support all single source or sole source purchases. At a minimum, the justification memo should include an explanation why the contract could not be competitively bid (why is the acquisition restricted to this good/services/supplier); should document the actions taken to obtain a more competitive bid (what market research was conducted to substantiate no competition); price is fair and reasonable (and how it was determined that price was fair and reasonable); and described any cost savings realized by acquiring the goods' services from this vendor. Requests to amend single or sole source contracts should also include this information in a justification memo. If the single source or sole source purchase price exceeds \$50,000, the EdFund President must approve the requisition. For contracts exceeding \$100,000 the EDFUND Board of Directors must approve the contracts prior to any expense or liability being incurred by EDFUND. Copies of the Board Approval must accompany the Contract Requisition.
- **Urgency Provision for Sole Source Contracts Over \$100,000** – The EDFUND Board of Directors approved an urgency provision at the November 10, 2000 meeting for situations requiring rapid approval of sole source contracts over \$100,000 between Board meetings. The provision allows for a consultative process between EDFUND's President, the Board's Chair, CSAC's Executive Director and the Commission's Chair to obtain contract approval. The contract shall not be signed without the approval of the Commission's Chair and CSAC's Executive Director.

The contract should be submitted to the Board of Directors at its next regularly scheduled meeting for ratification.

In order to ensure that quality products and services are obtained at reasonable prices, all procurements over \$10,000 should be competitively bid and require at least three (3) bids, unless it is confirmed and documented that three viable vendors declined to bid or are not available and/or there is only one vendor that can provide the goods/services. After evaluating bids for a given purchase, a justification memorandum or bid/cost analysis must be approved by the requesting department's AVP or above. The bid/cost analysis should, at a minimum, include a summary of all bids obtained, an explanation why the particular vendor was selected, and a summary of the benefits expected to be received including quantifications where relevant (e.g. cost savings expected).

**DRAFT****APPROVAL LEVEL**

**Only EDFUND employees with budgetary responsibility or those to whom the President has given in writing specific and documented permission are authorized to exercise signature authority as listed below.** The President of EDFUND may authorize the following levels of EDFUND management to sign requisitions and approve invoices for their own budgetary units:

**Purchase order up to \$2,500**

Purchase requisition from \$2,501 to \$5,000  
 Purchase requisition from \$5,001 to \$10,000  
 Purchase requisition from \$10,001 to \$50,000  
 Purchase requisition from \$50,001 to \$100,000  
 Purchase requisition above \$100,000 to \$500,000

**Approved by Manager or above**

Approved by Director or above  
 Approved by AVP or above  
 Approved by VP or above  
 Approved by CFO or President  
 Competitive bid purchase between \$100,000 - \$500,000 approved by President. All competitively bid purchases above \$500,000 and all Sole Source contracts must be approved by Board of Directors.

All contracts are to be signed by President or CFO. Any contract or purchase which exceeds \$500,000 in cumulative value must be approved by the Board **prior to any expense or liability being incurred** by EDFUND.

**Purchase amounts and/or requirements are not permitted to be “split” in order to circumvent authorization limits or any other requirements of this policy.**

All contracts and purchase orders must require invoices to be delivered to the Accounts Payable Unit in Financial Operations. Purchase orders and invoices are subject to the same signature authority as listed above.

**PURCHASE REQUISITION FOR GOODS**

A Purchase Requisition Form shall be used to initiate a purchase order for the acquisition of: (a) goods valued over \$2,500, (b) all goods carried on the corporate inventory with an individual identity number, including those for which a contract exists. Purchase Requisitions must be forwarded to Procurement in Business Operations **prior to any expense or liability being incurred** by EDFUND.

A Purchase Requisition must include the following:

- Cost benefit analysis and justification memorandum for purchases projected at more than \$2,500. The cost benefit analysis and justification memo should, at a minimum, include a summary of all bids obtained, an explanation why the particular vendor was selected, and a summary of the benefits expected to be received.

**DRAFT**

- Description, quantity, and other specifications of items ordered or statement/scope of work.
- Required delivery schedule.
- Statement of nature and purpose of the procurement.
- Special quality requirements and inspection methods, if necessary.
- Brand name or equivalent functional specifications.
- Chosen vendor, if any.
- Expense code, cost center code and project code, if applicable.
- Contractor/Vendor Bid Form or Sole Source Justification

Final vendor selection shall be confirmed by the EDFUND Procurement Office in Business Services utilizing documents provided with the requisition.

**SPECIFIC PURCHASES**

Additional coordination between Procurement and external units is required for the following items:

- Computer Equipment, Software, and Technology Purchases  
Procurement of technology-related items must first be evaluated by EDFUND Technology Solutions and Services (TSS) to ensure fitness for purpose, availability of existing equipment, and compatibility with systems. TSS will engage in discussions with potential vendors about specifications or bids and subsequently recommend a vendor or alternatives to the requested purchase. TSS will issue a recommendation memorandum to support the requisition.
- Printing Orders  
Procurement of printed materials to be distributed to any customers of EDFUND is to be coordinated through EDFUND Public Affairs, regardless of cost. Customers of EDFUND include employees, Board members, Commission employees and members, borrowers and potential borrowers, lenders and schools.
- Office Supplies  
Business Operations currently maintains a contract with a single online vendor for the purchase of office supplies. An exception may be granted for a regional office.
- Standard Office Equipment/Furniture  
Business Operations maintains a contract with vendors for the purchase of standard equipment. A requisition should be completed for certain equipment items (calculators, bookcases, etc.) and these requests must meet all other standard procurement processes.
- Goods over \$10,000  
All requisitions for goods over \$10,000 must be reviewed and risk assessed by the Legal Department prior to the issuance of a Purchase Order. The Legal Department will determine whether a formal contract is required.

**DRAFT**

- Emergency Purchases  
In certain situations when goods or services are needed to conduct business and time does not permit the appropriate requisition approvals, Business Services may generate a purchase order without written authorization from the required division head if; (a) the amount of the purchase is under \$10,000 and/or (b) the requisition is approved by the Chief Financial Officer (CFO) or his/her designee. Emergency is defined as an unexpected occurrence that poses immediate threat or impairment of life, health and/or business services of EDFUND.
- Purchasing Credit Cards  
For limited business purposes (including regional office internal needs), employees authorized by their VP may be issued a purchasing credit card. This credit card is used only for small dollar amount purchases such as office supplies and other goods and may not be used for travel related expenses. These purchases must be supported by an appropriately approved purchase requisition (see Approval Levels above).

The Procurement Office in Business Services will maintain a log of purchase orders placed prior to the required divisional approval and obtain written approval from the acquiring division head within five business days of the unapproved order. To minimize the number of emergency purchase orders requiring EDFUND CFO approval, all employees should project needs and allow time for acquisition of needed approvals.

**CONTRACTS FOR SERVICES**

A Contract Requisition form shall be used to initiate the purchase of (a) one-time repairs or single service or maintenance calls over \$2,500 and (b) all other services over \$2,500. Recurring monthly activity with a vendor must be evaluated on an annual basis when determining if the \$2,500 threshold will be met.

All contracts will be designed to meet the business needs of the organization, as well as to be legally enforceable. NOTE: Purchase of technology services must first be evaluated by TSS to ensure compatibility with systems, specifications and preferred vendor(s). TSS will issue a recommendation memorandum to support the requisition. TSS may complete the requisition process. Contract Requisitions should include a Statement of Work to be performed by the vendor.

**TO INITIATE A CONTRACT:**

- The Contract Requisition form must be completed. The EDFUND Manager, Director, AVP and/or VP must approve the requisition and are responsible for ensuring the requisite funds are in the respective budget. Unless already appointed, the requestor must designate a contract manager to review and approve the contractor's work, invoices, and act as liaison.
- The Contract Requisition form and the supporting documentation must be delivered to Business Services. Business Services shall assign a Purchase Order number and

**DRAFT**

forward the request to the Contract Administrator in the Legal Department.

**ALL EdFUND CONTRACTS:**

- should be limited to a maximum term of five years including any amendments.
- should include a 30-day termination clause allowing EdFUND to terminate a contract within 30 days for any reason.
- must include a 30-day termination clause allowing the Secretary of the U.S. Department of Education to terminate EdFUND contracts if the Secretary determines that the contract is inappropriate or otherwise inconsistent with the terms and purposes of Section 422 of the Higher Education Act [Section 682.418 (a) (2)].
- must be reviewed by the Legal Department and CSAC General Counsel if the terms and conditions of the contract obligate EdFund to indemnify or hold a contractor harmless and/or require EdFUND to execute a “prevailing parties” provision for the payment of attorneys’ fees in litigation or proceedings arising out of the breach, or alleged breach, of the contract.

Every contract shall have a designated Contract Manager whose duties include:

- Act as liaison to Contractor and monitor the performance of the work
- Ensure that deliverables are met
- Authorize payment and monitor availability of funds
- Notify the Legal Department immediately if the performance of the contractor is unsatisfactory
- Notify Business Operations if there will be an unusual shipment or delivery
- Fill out Contractor Evaluation Form upon completion of the contract

The Contract Administrator shall develop the contract, obtain the signatures of EdFUND’s president and the contractor on two original contracts and distribute the completed contract to the following:

- Legal Department file (first original)
- Vendor (second original)
- Contract Manager (copy)
- Business Operations (copy)
- California Student Aid Commission (copy)

Upon receipt of the copy of the executed contract, Business Services shall finalize the respective Purchase Order.

**Contract Amendment**

A contract can be amended to add time, money, and/or alter the scope of work.

**DRAFT**

**Supporting documents justifying the amendment as if the amendment constituted a new contract shall be** submitted to Business Services in addition to any other required forms. For any amendments requesting additional money, the appropriate level of management must authorize the total sum of money for the entire contract including the amendment.

Contracts should not be amended for the purpose of circumventing the competitive bid process or the level of approval requirements. If the scope of work will change in a substantial manner, a new contract should be utilized.

**Expiring Contract and Evaluations**

The Contract Administrator shall send a reminder to the Contract Manager 60 days before the contract expires. An evaluation form shall also be sent for feedback on the vendor's performance.