



Utah State Charter School Board

Review of Facilities Contracts or Financing Agreements for Charter Schools

U.C.A. §53G-5-404 (9) provides that “a charter school shall submit any lease, lease purchase agreement or other contract or agreement relating to the charter school’s facilities or financing of the charter school’s facilities to the school’s authorizer and an attorney for review and advice prior to the charter school entering into the lease, agreement or contract.”

All facility leases, financing contracts, or agreements must be reviewed by the school’s authorizer and an attorney before it is approved or executed. The SCSB will review the proposed and final draft that has not been previously approved, ratified, or agreed to.

To facilitate this statutory requirement, the State Charter School Board (SCSB) provides this policy and procedure.

Facility Review Policy: This review applies to all leases, lease-purchases, facility financing, construction, modification, built-to-suit, or development contracts or agreements of a charter school facility that costs \$50,000 or more per year or 5% of a charter school’s annual budget. Leases, contracts, or agreements cannot be approved or executed until the 14-day review period is complete. After the SCSB has provided its review and advice, the school’s governing board can meet to approve the draft after discussing the SCSB’s review and advice with the rest of the board.

If something in the draft lease, contract, or agreement changed after it was reviewed by the SCSB, then the new draft will have to be sent to the school’s attorney and the SCSB for review and advice.

Facility Review Procedure: The following documents and information are to be submitted to SCSB staff, via upload into the UCAP system, no later than fourteen days prior to approving the lease, contract, or agreement. Please provide an explanation for any item that was not uploaded. Within fourteen (14) days after all documents have been uploaded, the SCSB will provide its statutory review and advice to the charter school’s governing board, director, and business administrator.

1. The proposed and final draft of the lease, contract, or agreement subject to review, along with the associated payment or amortization schedule;
2. A description about the facility and how the lease, contract, or agreement was negotiated;
3. Letter from the school's independent attorney who should have no conflicts of interest related to any of the parties in the lease, contract, or agreement affirming review of the lease, contract, or agreement as required by U.C.A. §53G-5-404 (9);
4. Governing board meeting minutes showing that the charter school governing board has reviewed the proposed draft lease, contract, or agreement in an open and noticed meeting; and has considered key terms, such as price, term, financing, option to purchase, penalties, and the school's responsibilities. If applicable, minutes should include the reason for going into a closed session and the vote to go into the closed session; and,
5. If applicable, documents relating to the solicitation of the lease, contract, or agreement, such as a copy of the resolution passed by the school's governing board regarding the key terms of the procurement solicitation and other vendors or leases considered.

Note: Request for Proposal (RFP) is required for construction, modifications, additions, or development of any charter school facilities.

Free assistance with your RFP is provided by the Utah Division of Purchasing and General Services – Courtesy Posting Services.

<https://purchasing.utah.gov/for-agencies/courtesy-posting-services/>

They provide anywhere from a quick review of your proposal, to a review that ensures compliance with the Utah procurement and administrative code, or they can help with the whole procurement process from the beginning to the end.

6. Disclose all conflicts of interest between the school (which includes the board, staff, business administrator, or management company) and the developer or contractor by providing a signed declaration by the governing board chair, director, and business administrator affirming that all conflicts of interests have been disclosed.

Definition: Conflict of interest is a situation where a person or entity is involved in two relationships competing with each other and serving one interest could involve working against the other.

Any review done by the SCSB provides only non-binding advice as per statute. A review does not grant permission or prohibit a school from entering into any lease, contract, or agreement. This review does not serve as an assessment by the SCSB that the agreement is financially sound, legally binding or enforceable. Any decision by a school to enter into any lease, contract, or agreement is its own decision. The SCSB does not accept any responsibility or liability for any lease, contract, or agreement entered into by any charter school subsequent to SCSB review or any other lease, contract or agreement not presented to the SCSB for review due to it being outside of the purview of U.C.A. §53G-5-404(9).