



**DUNCANVILLE ISD**

**PURCHASING GUIDELINES**

**2021 – 2022**

## Introduction

As a support organization of the District, the Purchasing Department is charged with the procedural processes for the acquisition of goods and services required by the District that are the most cost effective and efficient. To this end, the Purchasing Department staff will function in a manner consistent with applicable laws, School Board policies, the Uniform Commercial Code, and other sound business practices, while establishing a competitive opportunity for all qualified vendors.

The purpose of these guidelines is to provide information to all schools and departments to allow them the opportunity to become familiar with the Purchasing Policies and Procedures of Duncanville Independent School District.

## Requisitions/Purchase Orders

Purchase orders are issued by the Purchasing Department to procure specific goods and services needed by the schools and departments. The purchase order is a formal document and is a legal, binding commitment between the District and the vendor. It is a contract.

The following are the procedures:

- Requisitions are entered and approved in Skyward.
- After the requisition has been approved, a purchase order will be generated and controlled by number sequence through the District's financial operating system (Skyward).
- The Purchasing Department will print the purchase order with electronic signature of the Director of Purchasing.
- It is the responsibility of the purchasing department to provide purchase order copies to the vendor, unless the originator requests the purchase order be returned to them. Exception is during District closures or work from home situations, all POs (other than e-commerce or POs emailed from Skyward) will be sent back to the originator to make sure their order is placed with the vendor.
- Online purchasing is not allowed unless you have an approved purchase order. **No district credit card is to be used for online purchases.**
- **Purchase orders must be for the exact items listed and freight must be included.**
- If the purchase order is not for the correct amount or freight was not included, Purchasing must authorize any changes or increases to the original order.
- Long term purchase orders (blanket PO's) may be issued for recurring expenses. These requests will be reviewed and approved on an "as-needed" basis; this is mainly for operations departments.
- No POs for Media Center are needed, invoices will be sent to the Business Office for processing. Transportation (field trips), Nutrition and Culinary Arts, a PO still needs to be done.
- When ordering for multiple campuses/departments either place the orders by each campus/department and have it delivered to that campus/department or the orders will have to be sorted at the warehouse before being delivered to the appropriate campus/department. Orders

will not be delivered to one place, sorted, and then re-delivered to another place.

### **Requisition Format**

In order to avoid delays in processing, requisitions should include all information necessary to clearly define the needs of the user department or campus. The information required includes the following:

- Name of cooperative and contract number (if any), such as BuyBoard, Region 20, TCPN, etc. This information will be located in a drop down box, if it is not there contact purchasing immediately.
- Eduphoria Ticket # must be on the PO if purchasing technology items.
- Complete and accurate description of items to be purchased who, what, where, when & why or item # and quantity.
- Travel requisitions must state the following: **who, what, where, when and have Travel form A attached.**
- Quantity needed.
- Vendor name and address (as listed in Skyward).
- Account code to be charged. It is the end user's responsibility to ensure the correct budget codes are used when entering a requisition. A requisition that contains the wrong budget code will be returned by Business Services in order that the correct account code can be approved by each approver. A comment will be entered in the notes section.
- Price (per unit and in total).
- Payment terms, if any.
- Discounts, if any.
- Transportation arrangements (shipping/freight costs, if any).
- Requested by (warehouse, school campus, department, individual, etc.)
- Required delivery date, if any.
- Special instructions - a drop down box under **Narrative** has preset options for special instructions:
  - 01 – Fax purchase order to vendor
  - 02 – Do not fax purchase order
  - 03 – Return purchase order to campus
  - 04 – Ordered online

Alternatively, special instructions can be typed into the body of the requisition. **Do not use the internal note for any special instructions as they cannot be viewed on the actual Purchase Order.**

- All support documentation must be attached in Skyward, that is needed (Edgar form, board minutes, quote etc.).
- After a requisition is in the system it must then be approved by the Budget Manager. Requisitions which require expenditures from a Special Revenue Fund must be approved by the State and Federal Program Administrator or Special Ed. Director.

## **Review by Purchasing**

Requisitions received by the Purchasing Department are reviewed for the following items prior to approval of a purchase order.

- Accuracy.
- Adequate description; who, what, where, when & why or item # and quantity.
- Contract information.
- Overall completeness.
- Compliance with competitive procurement as established in Education Code 44.031, compliance with Board policy.
- Will be returned if the above items are not met.

## **Modifications to a Purchase Order**

- Purchase orders are not to be modified with the vendor or by schools or departments directly.
- If it becomes necessary to change the terms of a purchase order, the school or department must **first contact the Purchasing Department.**
- Once an agreement to any price increases or modification of terms is reached, purchasing will adjust the encumbrance on the purchase order and notify all involved parties of the changes.
- In the case of reorders, the same purchase order number cannot be used.

## **Checking Purchase Order Status**

- You have the ability to check the status of the purchase order using Purchasing Activity.
- The Purchasing Department uses notes to enter comments regarding incorrect or missing information that the end user needs to correct or provide in order for the requisition to be approved.
- It is the end user's responsibility to monitor purchase order status.

## **Cancellation of a Purchase Order**

- In the event it is necessary to cancel a Purchase Order, the school or department must contact the Purchasing Department.
- The Purchasing Department will close the purchase order and liquidate the funds encumbered.
- The school or department placing the order must also notify the vendor of the cancellation of the purchase order.

## **Grant and Special Fund Purchases**

Refer to Federal and State programs guidelines and procedures in Appendix C. No micro purchases are allowed.

## **Unauthorized Purchases**

All District employees shall strictly adhere to Board policy. Employees should note that acquisitions of goods or services that do not follow the established procedures are considered to be unauthorized and the person completing such a transaction may be held personally liable for the debt as per Board policy **CH (LOCAL). Purchase of gift cards is NOT allowed.**

## **District Property**

- District funds will not be used to purchase personal items.
- All items purchased with District funds are the property of DISD.
- Property may be assigned to a staff member, but it is always the property of the District. It must be returned to the District if the staff member leaves the employment of DISD or is re-assigned.
- If the equipment is removed from the campus, the Asset Inventory Coordinator (ext. 2276) or Technology (Help Desk, ext. 2300) must be notified and the proper forms completed.
- Items purchased using federal funds may not be removed or transferred from the original location for which the purchase was intended without contacting the State & Federal Programs Administrator (ext. 2055)

## **Produce and Fuel**

There is an exception for produce and fuel that allows the District exceptions for these purchases.

## **Professional Services**

An additional exception applies to professional services as defined under Government Code, Section 2254.003. Contracts for professional services are not procured through competitive bids. Rather such services are chosen through a process of selection involving the review of professional qualifications. These services include, but are not limited to:

- Professionals such as attorneys
- Architects
- Fiscal agents
- Licensed medical professionals
- Auditors

## **Licenses**

All technological software or hardware purchases must be approved and quotes are obtained through the Technology department and follow all of their procedures.

## **Memberships and Subscriptions**

- Memberships must be institutional memberships when available.
- Individual memberships will be paid if the membership is necessary for the job position currently held.
- Personal liability insurance will not be paid by the District.
- Subscriptions must be in the name of DISD – Campus/Department and must be related to the mission of the school or department for which the subscription is purchased. Magazines will not be delivered to home addresses.
- POs for memberships and subscriptions will be returned to the campus/department for processing. There are numerous steps involved with processing these and there will be less confusion if they are handled by the campus/department.

## **Sole Source**

- The District recognizes that there may be instances when sole source purchases must be made, but such purchases must be appropriately justified according to Education Code 44.031.
- The justification for such purchases must be in writing and must be based upon a need for some feature or characteristic (specification) that is unique to the requested product or service that cannot be provided by any other product or service.
- Additionally, it must be documented that the item or product to be purchased is precluded from competitive procurement practices. Sole Source forms are located on the Purchasing website and must be completed each year in order to be compliant with purchasing law.
- **Sole source items are defined as follows:**
  - a. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
  - b. A film, manuscript, or book;
  - c. A utility service, including electricity, gas, water (if available through a single source) or;
  - d. A captive replacement part of component for equipment.

## **Purchasing Cooperatives**

- Memberships to Purchasing Cooperatives are allowable under state law and must be approved by the Board of Trustees.

- All items and services available through a cooperative have satisfied all procurement regulations for competitive procurement.
- These items or services do not require further bidding before being procured.
- DISD is a member of the following Purchasing Cooperatives:
  - ♦ **IGPA** (Government Procurement Alliance)
  - ♦ **BUYBOARD** (Texas Local Government Statewide Purchasing Cooperative)
  - ♦♦ **CTPA** (Central Texas Purchasing Alliance )
  - ♦ **CITIES**
    - ♦ **City of Dallas**
    - ♦ **City of DeSoto**
    - ♦ **City of Duncanville**
    - ♦ **City of Frisco**
  - ♦ **DIR** (Department of Information Resources)
  - ♦ **EDUCATION SERVICE CENTERS** (Region 3, 4, 10, 13, 14, 19, and 20 Co-Operatives)
    - ♦ **Allied States Cooperative** Region 19
    - ♦ **ESC 10** (Multi Region Purchasing Co-op & RAMS) Region 10
    - ♦ **NCPA** (National Cooperative Purchasing Alliance) Region 14
    - ♦ **NIPA** (National Intergovernmental Purchasing Alliance) Region 4
    - ♦ **PACE** (Purchasing Association of Cooperative Entities) Region 13 & 20
    - ♦ **PCA** (Purchasing Cooperative of America) Region 3
    - ♦ **TCPN** (The Cooperative Purchasing Network) Region 4
    - ♦ **TIPS** (Texas Interlocal Purchasing System) Region 13 & 20
  - ♦ **E&I** (E & I Cooperative Services)
  - ♦♦ **EPCNT** (Educational Purchasing Cooperative of North Texas)
  - ♦ **GSA** (General Services Administration - Federal Govt.)
  - ♦ **HCDE** (Harris County Department of Education-Choice Partners)
  - ♦ **HGAC** (Houston Galveston Area Council)
  - ♦ **KPN** (Keystone Purchasing Network)
  - ♦ **NPI** (National Procurement Institute) Tarrant County
  - ♦ **NJPA** (National Joint Powers Alliance)
  - ♦ **PCA** (Purchasing Cooperative of America)
  - ♦ **PCAT** (Property Casualty Alliance of Texas)
  - ♦ **PPPCP** (Prospering Pals Nutrition Cooperative) Coppell ISD
  - ♦ **TASB** (Fuel Program)
  - ♦ **TWCSP** (Texas Workers Compensation Solutions)
  - ♦♦ **TxSmartBuy** (Texas Comptrollers Statewide Procurement)
    - ♦ **TPASS** (Texas Procurement and Support Services)
    - ♦ **TXMAS** (Texas Multiple Award Schedule)
  - ♦ **US Communities** (Government Purchasing Alliance)

## Vendors

- An “approved vendor” is a vendor that has met purchasing laws. The vendor may be an awarded vendor through an RFP or an awarded vendor through one of the cooperatives.
- Every effort must be made to use an awarded vendor for all purchases of goods and services.
- **Any request to purchase goods or services from a new vendor must be accompanied by a completed New Vendor Application, a current W-9, an information form and which Co-ops they have been awarded bids and entered in Skyward as a vendor request. No exceptions.**
- **If a problem arises with an order, it is important to document the problem**, noting the date and an accurate description of the problem. Keep a record of all phone calls, including the dates and what was discussed and send a copy to the Purchasing Department preferably by e-mail.

## Compliance

- Budget Manager shall plan purchases for each budget year in order to maximize opportunities to use competitive procurement options.
- **Purchases and contracts over \$50,000 must be approved by the Board of Trustees before a requisition is put in the Skyward system (CH Local & Legal) and a copy of the Board minutes of the approval must be attached to the requisition in Skyward.**
- Budget Manager shall contact the Purchasing Department for all requests for procurements that cost \$10,000 or more for competitive procurement and/or Board approval (CH Legal & Local).
- Budget Manager shall only initiate and approve procurements that are within approved budget authority.

## Procurement Thresholds

State law requires that school Districts consider all purchases in a category in the aggregate for a 12-month period. This applies to all goods and services. If the items or services needed are not currently covered by a competitive purchasing contract, the limits listed below will apply:

- |                     |  |
|---------------------|--|
| \$10,000 - \$49,999 | The Purchasing Department may ask for three written competitive quotes from vendors for best value. <b>Coordination with the Purchasing Department is required for this dollar volume.</b>   |
| \$50,000 and up     | The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. <b><u>However, any single, budgeted purchase of goods or services that costs \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place (CH Local &amp; Legal).</u></b> |



### **Tax Exempt Status**

- The District is a political subdivision of the State of Texas and as such is exempt from state sales tax under Chapter 20, Title 122A, Revised Statutes of Texas.
- Items or services purchased for which tax exemption status is claimed must be used within the performance of the District's business.
- **It is a criminal offense to utilize this tax exempt status for any other purpose.**

### **Blanket or Open Purchase Orders**

- A timeframe for the purchase order to cover.
- The total amount not to be exceeded.
- Give a concise sample description of items to be purchased and for what purpose (e.g.: paper goods, plates, cups and napkins for professional development conference).
- These are mainly to be used with retail store only.

### **Charter Buses**

- State reason for bus charter, name of event, destination, and date(s) of rental.
- Bus size (i.e. 33 passenger, 55 passenger).
- Rate: per mile, hour, or day.
- Applicable quantity: miles, hours, or days.

### **Printing**

- Contact Purchasing Department for instruction and quotes.

### **Independent Contractors**

- The term "independent contractor" is used in these instances to denote Non-District personnel performing such services or programs on District property or on behalf of the District.
- Contact the Purchasing Department to determine the proper procurement procedure.
- Requires a contract, certificate of insurance, certification as required by Senate Bill 9, conflict of interest, etc.

### **Contract Time Period**

- DISD staff may only use funds appropriated by the Board in the approved budgets.
- The staff does not have the authority to commit funds in future budgets.

- While contracts may be issued for any time period as agreed to by the District and the vendor, if the contract extends beyond the end of the current fiscal year, it must contain a cancellation clause as defined by Local Government Code, Chapter 271.903.
- This clause permits the District to cancel, without penalty, any contract for which the Board does not allocate funding in the sequential year's budget.

## **Contracts**

- All contracts under \$50,000 are signed by the Superintendent or designee, CFO or Chief of Staff.
- A Superintendent signed contract must be received prior to submittal for a purchase order.
- Any other employee who signs a contract or agreement will be personally liable for the terms of the contract or agreement.

## **Shipping Destination**

- When a requisition is created the **“Ship To” address drop down contains various options.**
- All deliveries will be made to the DISD Warehouse unless otherwise specified.
- The **“Attention”** field is the “end user” field. This field must be completed if the merchandise must be identified by individual or dept. /campus. If it is left blank, the merchandise will be delivered to the organization as identified by the purchase order group.
- If there is a problem with delivery, you should contact the Warehouse Supervisor at ext. 2293 immediately.

## **Points to Remember**

- Schools and Departments are encouraged to utilize planning activities for anticipated needs.
- Lead times vary for different purchasing methods so the administrator/secretary should consult with the Purchasing Department to determine the proper purchasing method.
- Principals and department heads are responsible for the funds under their control.
- Requests for additional funding or transfers from one budget category to another must be directed to the Director of Accounting or the CFO in the Business Services department.
- Principals and department heads may only authorize expenditure of appropriated funds; therefore, the state requires that a school District operate under an encumbrance accounting system.
- No one has the authority to spend District funds unless the funds have been set aside for the stated purpose, and have been properly approved by the Director of Purchasing.
- All purchase commitments shall be made by the Purchasing Department on a properly drawn, signed, and issued purchase order.

- **Vendors of the District should be notified that orders placed without a properly drawn purchase order shall not be honored by the District.**

#### **In Summary—Employee Responsibilities:**

- Shall plan accordingly. Requisitions have to be approved by several administrators before a PO is created. Due to the volume of requisitions generated daily, plan for several days to a week.
- Shall ensure that the purchasing process (through the use of an approved purchase order) always precedes the payment process (invoice).
- Shall only initiate and approve procurements that are within approved budget authority.
- Shall use approved vendors to procure goods and services.
- If a vendor must be contacted to obtain information to prepare a requisition, the employee shall explain to the vendor that the request for information does not represent a commitment to purchase.
- Shall provide for initiating, authorizing, and adequately funding the procurement through a properly approved purchase order.
- Shall monitor the purchase order life cycle.
- Shall not release the requisition/purchase order number or use a draft copy of the requisition in dealing with the vendor until there is an approved purchase order by the Purchasing Department.
- Problems with vendor's unsatisfactory performance shall be directed to the Purchasing Department for appropriate action, which may include closing the purchase order.
- Shall not make any commitments to acquire goods or services in the name of the District for personal use or ownership.
- Shall not make or authorize separate, sequential, or component purchases in order to avoid requirements under the Texas Education Code, Section 44.031, or Local Board Policies concerning purchasing.
- Shall coordinate purchases valued at \$10,000 or more with the Purchasing Department and complete proper paper work
- Shall process all requests for procurement that cost or aggregate to a cost of \$50,000 or more through the Purchasing Department and complete proper paper work.
- Shall follow the policies and procedures contained in Board Policy CH (LEGAL) for emergency purchases.
- Shall be responsible for complying with statutory requirements, Board policies CH (LOCAL & LEGAL), and the Purchasing Guidelines procedures when purchasing goods or services for the District.
- Shall not make changes to purchase orders after it has been sent to the vendor without prior approval from the Purchasing Department.
- Shall ensure that items ordered match the purchase order.

- Shall not use the District tax exempt form for any other purpose than to purchase items to be used within the performance of the District's business.
- Employee Expense Reimbursements:
  - ♦ Contact Purchasing to add an employee as a vendor into Skyward for expense reimbursements.
- Receiving must be done timely and accurately.
  - ♦ Orders that come directly to your campus/department, i.e. Office Depot, Staples, etc.
  - ♦ **You must receive immediately** – quantity for line item Purchase Orders, dollar amount for blanket Purchase Orders.

#### **The Purchasing Department Responsibilities:**

- Shall review each purchase order in a timely manner for completeness and verify that the proposed purchases are being made through approved sources.
- Shall verify compliance with statutes, regulations, and Board policy applicable to purchasing.
- Shall have discretion to direct purchases through interlocal agreements or cooperatives in order to save time and money.
- Shall review requests to use vendors in a timely manner and verify that the annual aggregate amount for the goods or services ordered does not require competitive procurement.
- Shall work with the end users to resolve problems with vendors.

Most orders that come to the warehouse will be received by the warehouse

## **Duncanville ISD Procurement Procedures Child Nutrition Program**

Duncanville ISD's policy for procuring goods and services for the Child Nutrition Department is as follows:

If procuring goods or services for Duncanville ISD's Child Nutrition Department, the first step in the process will be to determine a cost estimate. The Child Nutrition Director will gather estimates.

If the cost estimate is determined to be in excess of \$50,000 or more, then Formal Procurement Methods will be utilized. These formal methods will include either an Invitation for Bid or a Request for Proposal. The Child Nutrition Director will initiate these processes. The Purchasing Director will present the awarding bid or proposal to the Board of Trustees for consideration and approval.

If the cost estimate is determined to be under \$50,000, one of the Informal Procurement Methods will be utilized. If the price is greater than \$3,500.00 but less than \$50,000.00, then the Small Purchase Method will be utilized. Using the Small Purchase method, Duncanville ISD will solicit at least three quotes from at least three responsible vendors. A "no response" is considered a "response" and will be documented as such. Duncanville ISD will retain documentation demonstrating the price quotes.

Duncanville ISD will take steps to assure that small, minority and women's businesses enterprises and labor surplus firms are used when possible, as required per (2CFR 200.321)

These procurement procedures are effective July 1, 2018, and will be reviewed annually.

### **Contract Management**

- Use of our Child Nutrition Federal Funds is compliant with all Federal, State, and local regulations.
- That all specifications, technical requirements, and terms and conditions of all contracts are executed correctly.
- That we are not charged for duplicative services.
- Quantities specified are made available and delivered.
- Delivery times and schedules are being met per contract terms.
- Product deliveries and/or services are occurring at the correct location if multiple locations are part of the awarded contract.
- Products and/or services are meeting the specifications as described in the solicitation.
- Substitutions of products are being handled as outlined in the Terms and Conditions and are adequate to the specified product.

- Contracts require a notification 72-hour prior to delivery to confirm that substituted product is comparable and acceptable.
- Vendor response time to product or service issues is appropriate concerning each situation, if any.
- Pricing received on invoices is checked against awarded bid pricing to ensure accuracy and correctness.
  - If incorrect pricing is charged, the vendor will be contacted to rectify the pricing and provide a credit.
  - If incorrect pricing is charged on a coop-procured bid, the Vendor and the coop Program Coordinator will be notified and follow up required to ensure a credit is given.
- Damaged or spoiled product will be identified at time of delivery and immediately rejected. Invoice will be noted and signed by the driver. Proper follow up will be done to ensure a credit is issued.
- Items ordered and appearing on the invoice but not included in the delivery will be noted on the invoice and require driver signature or initials. Vendor is required to “hot shot” the missing products or proper substitutions within a 24 hour period from time of original delivery.
  - If vendor cannot “hot shot” the products, proper credit will be requested.
- If the contract was procured by our coop, we will follow all above steps for managing the contract along with notifying our coop Program Coordinator of all issues with each awarded vendor.

### **Code of Conduct-Child Nutrition Program**

**Regulations:** 2 CFR Part 200.318(c)(1) and 7 CFR Part 210.21(c) State Procurement Code and Regulations, Duncanville ISD Child Nutrition Department.

**Procedures:** Duncanville ISD seeks to conduct all procurement procedures:

- In compliance with stated regulations; and to prohibit conflicts of interest and actions of employees engaged in the selection, award and administration of contracts.
- No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal, State, or local funds if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- The officers, employees, and agents of the entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
- Disciplinary actions will be applied for violations of such standards by officers, employees, or agents of the organization.
- Duncanville ISD’s procedures seek to avoid acquisition of unnecessary or duplicative items.
- Consideration is given to choose a method of procurement to obtain a more economical purchase that is in the best interest of the District. Where appropriate, an analysis will be made to determine the most economical approach.

- Duncanville ISD will purchase goods, products, and/or services for use in the Child Nutrition Program in compliance with 2 CFR Part 200 and State Laws using the procedures outlined as follows.

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The procurement process practiced by the Duncanville ISD CNP must not restrict or eliminate competition (2 CFR Part 200.318(c)). For example, description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets the needs of the CNP.

New procurement procedures do not need to be developed every year. However, an annual review of procedures is suggested to assure its relevance to current procedures.

# **APPENDIX A**



## AUTHORITY FOR PROCUREMENT

Under the Texas Education Code § 44.0312 (a), the Board of Trustees of the District may, as appropriate, delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a school District to a designated person, representative, or committee.

Under Board policy CH (Local) Responsibility for Debts, the Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with adopted Board policy and current administrative procedures. The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control; **persons making unauthorized purchases shall assume full responsibility for all such debts.**

Section 44.052 Texas Education Code states that a Superintendent that approves any expenditure of school funds in excess of the amount appropriated for that item(s) in the adopted budget commits a Class C misdemeanor offense. Consequently, close supervision and monitoring of the availability of budget dollars and of the approval process for requisitions are important elements of the District's purchasing process.

## ETHICS

The Texas Education Agency (TEA), *Financial Accountability System Resource Guide – General Ethical Standards and other documents*, prescribes common standards of ethics governing the conduct of employees involved in the purchasing function, which are incorporated in the procedures prescribed below.

**Sequential Purchases** – District employees shall not make purchases, over a period, of items that in normal purchasing practices would be made in one purchase.

**Component Purchases** – District employees shall not make purchases of the component parts of an item that in normal purchasing practices would be made in one purchase.

**Separate Purchases** – District employees shall not make purchases separately in order to circumvent board approval of items that in normal purchasing practices would be made in one purchase.

**Conflict of Interest** – In accordance with Board Policy DBD (LEGAL), an employee who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the employee knows is interested in or likely to become interested in any such transactions of the District. *Penal Code 36.08(d)*. A conflict of interest is defined as any circumstance that could cast doubt on an employee's ability to act with total objectivity with regard to the District's interest.

**Gifts** - District employees shall not solicit, accept, or agree to accept any gifts or benefits from a person conducting or intending to conduct business with the District. **Note:** The prohibition of accepting gifts does not apply to accepting an unsolicited item with a value of less than \$75, excluding cash or a negotiable instrument (Penal Code 36.10). This administration's position is that employees may never accept cash, negotiable instruments, gifts, or travel of any kind.

**Financial Interest** - District employees shall not participate directly or indirectly in procurement when the employee or the employee's family member has a financial interest pertaining to the procurement.

**Personal Use** - District employees shall not make any commitment to acquire goods or services in the name of the District for personal use or ownership.

**Equal Consideration** - District employees shall grant all competitive suppliers equal consideration insofar as state or federal laws and District policy permit.

*Credit for the content of this section is given to the Texas Education Agency and the Comptroller of Public Accounts, Standard Financial Management System for Texas Cities and Counties, Model Purchasing Guidelines. State law relating to violation of purchasing requirements imposes upon violators certain criminal penalties, which are found in Section 44.032, Texas Education Code, and Chapter 271.029, Local*

These are certain common standards of ethics which should govern the conduct of employees involved in the purchasing function, as follows:

1. It is a breach of ethics to attempt to realize personal gain through public employment with a school District by any conduct inconsistent with the proper discharge of the employee's duties.
2. It is a breach of ethics to attempt to influence any public employee of a school District to breach the standards of ethical conduct set forth in this code.
3. It is a breach of ethics for any employees of a school District to participate directly or indirectly in a procurement when the employee knows that: The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or  
A business or organization in which the employee, or any member of the employee immediate family, has a financial interest pertaining to the procurements; or
4. Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
5. If a school District board member or other official has a substantial interest in procurement, that person shall abstain from discussion and decisions regarding the award of the procurement contract. In addition, the board member should disclose this substantial interest by filing an affidavit with the District.
6. Gratuities - It is a breach of ethics to offer, give or agree to give any employee or former employee of a school District, or for any employee or former employee of a school District to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract of subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense.
7. Kickbacks - It is a breach for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract of a school District, or any person associated therewith, as an inducement for the award of a subcontract or order.

### **Criminal Charges: Texas Education Code 44.032**

Ethics relating to conflicts of interest, financial interests in firms conducting business with the District, kickbacks, gratuities, and improper use of a position or confidential information are clearly communicated throughout the District.

Additionally, District personnel should be aware that under the School Law, Chapter 44.031, as well as other state or federal statutes regarding the expenditure of public funds, there are penalties for violations of purchasing processes which can include criminal prosecution and loss of employment opportunities.

- An officer, employee, or agent of a school District commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.
- An officer, employee, or agent of a school District commits an offense if the person with criminal negligence violates Section 44.031(a) or (b) other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.
- An officer or employee of a school District commits an offense if the officer or employee knowingly violates Section 44.031, other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.
- The final conviction of a person other than a trustee of a school District for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87, Local Government Code, and is

### **RISK MANAGEMENT**

There are numerous risks factors associated with the procurement of goods and services. A few examples would include:

- Violating statutes and regulations governing appropriate procurement methods.
- Failing to comply with Board policies.
- Initiating purchases without Board approval or an approved purchase order.
- Abusing purchasing authority and committing fraud.

### **CONTROL ENVIRONMENT**

Texas Education Agency guidance states that “A District needs a strong control environment in which to perform the purchasing function”. In addition to the purchasing guidelines, the following activities enhance the control environment and require monitoring by those involved in procuring goods and services:

- **Approval of purchase requisitions at the campus and departmental levels.** The budget manager should review for need and approve purchase requisitions before they are submitted to the centralized Purchasing Department for processing. If a purchase is to be federally funded, approval should first be obtained from the State and Federal Program Administrator.
- **Approval of purchase orders.** The Purchasing Agent or other designated official should review requisitions for compliance before approving purchase orders for issuance to vendors.
- **Supervision of purchasing process.** Vigilance in the supervision of the entire purchasing function on a daily basis is essential.

- **Training of District personnel.** Formal training should be conducted annually (preferably at the beginning of the school year, however, training may be conducted throughout the school year through revisions to the purchasing guidelines or for newly hired personnel).
- **Purchasing Guidelines.** The Purchasing Guidelines shall be distributed to all new employees who have direct responsibility for the purchase of goods and services. The Purchasing Guidelines will also be posted on the District's web site.

## **PURCHASING PROCESS**

The following criteria are used by DISD to evaluate the overall, best value when awarding a bid:

### **Texas Education Code §44.031.**

1. The purchase price;
2. The reputation of the vendor and of the vendor's goods or services;
3. The quality of the vendor's goods or services;
4. The extent to which the goods or services meet the District's needs;
5. The vendor's past relationship with the District;
6. The impact on the ability of the District to comply with the laws and rules relating to historically under-utilized businesses;
7. The total long-term cost to the District to acquire the vendor's goods and services; and
8. Any other relevant factor specifically listed in the bid.

## **COMPETITIVE BIDDING**

All District transactions for the purchase of real property (goods) valued at \$50,000 or greater, in the aggregate, during a 12-month period are covered by state legal requirements. Texas Education Code, Chapter 44, Subchapter B, Section 44.031 (a) states: Except as provided by this subchapter, all school District contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the District:

1. Competitive bidding;
2. Competitive sealed proposals;
3. A request for proposals, for services other than construction services;
4. An Interlocal agreement;
5. A design/build contract;
6. A contract to construct, rehabilitate, alter or repair facilities that involves using a construction manager;
7. A job order contract for the minor construction, repair, rehabilitation or alteration of a facility;
8. The reverse auction procedure as defined by section 2155.062(d), Government Code; or
9. The formation of a political subdivision corporation under Section 304.001, Local Government Code.

A school District may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts entered into in accordance with Chapter 2054 and 2157, Government Code.

## BID SPECIFICATIONS/STATEMENT OF WORK

Preparation of specifications shall be the responsibility of the department with assistance from the Purchasing Department. The responsibility of the Purchasing Department is to review the specifications to ascertain whether competitive bids can be obtained and assure that Board policies and state laws are followed regarding the purchase. Statement of work shall be provided prior to solicitation of quotes for services. Statement of work/ specifications must be provided to all vendors to ensure equal pricing.

Specifications must contain adequate technical descriptions to clearly identify for prospective bidders the type of material, equipment or services required. In addition to the detailed specifications, brand names, model numbers and like descriptions may be used to inform prospective bidders of the type of quality required. Descriptions must include quantitative data such as size, weight or volume and qualitative data such as commercial grade, texture, finish, strength, chemical analysis or composition where possible.

## INDEPENDENT CONTRACTORS

The District departments or schools may contract with individuals or companies for certain services or programs. The term “independent contractor” is used in these instances to denote Non-District personnel performing such services or programs on District property or on behalf of the District.

All independent contractors will be required to sign a contract agreement with DISD. Only the Superintendent can commit the District. A contractor must also provide proof of insurance at the levels recommended by the District. Additionally Independent Contractors are required by statute to provide a Criminal History Certification by Independent Contractor/Subcontractor certifying that the statute requirements have been met and will be monitored by the Contractor.

### Required Background Checks for Independent Contractors

Effective January 1, 2008, Texas Education Code Chapter 22, Subchapter C requires repair and service contractors to school Districts in Texas to obtain criminal history record information regarding covered employees and to certify to school Districts that they have done so.

Covered employees *with disqualifying convictions* **are prohibited** from performing services at a school District.

A. As defined by Texas Education Code, Chapter 22, disqualifying convictions include any of the following, if at the time of the offense, the victim was under 18 or enrolled in a public school:

1. A felony offense under Title 5, Texas Penal Code;
2. An offense for which a defendant is required to register as a sex offender under Chapter 62, Texas code of Criminal Procedure; or
3. An equivalent offense under federal law or the laws of another state.

Repair and service contractors must obtain the criminal history record information on all new or existing employees who will have continuing duties relating to the contract and will have **direct contact** with students.

Contractors shall contact the Texas Department of Public Safety (DPS) directly to establish an account to obtain criminal histories or they may contact our Human Resources Department for assistance with this requirement.

The contractor must certify to the school District that it has performed the required criminal history reviews.

## **TYPES OF PURCHASE ORDERS**

**Routine purchase orders** are for all normal purchasing transactions requiring a purchase order. These are “line item” purchase orders (i.e. purchase order that have a quantity and a unit price per each item purchased).

A **blanket purchase order (open purchase order)** is issued to an approved vendor authorizing purchases from that vendor over a specified period of time. However, blanket purchase orders must follow certain criteria: pre-qualification of vendors, limitation on the maximum amount for purchases, a specific time frame for purchases covered by the blanket purchase order, and identification of authorized purchasers. Blanket purchase orders are issued so that supplies, materials, or services are available "as needed" by end users. For example, blanket purchase orders may be requested on a regular basis by the Food Service department for perishable items. These purchase orders eliminate numerous individual purchase orders for small dollar-value items.

Certain controls should be in place for the use of blanket purchase orders:

- The number of vendors to whom blanket purchase orders are issued is limited.
- Those who can make purchases under blanket purchase orders should be clearly designated.
- Dollar limits should be carefully observed.
- **Do not use blanket purchase order (open purchase order) when you know the quantity and unit price per item to be purchased or for one time purchases.**

Two types of **emergency purchases** are made in school Districts. One type results from an eminent threat to the health, safety, or welfare of students. Such purchases must comply with state law and may be made only after a formal board action declaring an emergency and authorizing the purchase. An example of an emergency purchase of this type is the authorization to repair a school after a fire or a natural disaster.

1. Emergency purchases exceeding the dollar amount triggering competitive procurement requirements shall be made in accordance with subsection (h) Section 44.031 Texas Education Code.
  - a. *Text of subsec. (h) as amended by Acts 1999, 76th Leg., ch. 922, § 1 (h) If school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board of trustees determines that the delay posed by the contract methods required by this section would prevent or substantially impair the conduct of classes or other essential school activities,*

*then contracts for the replacement or repair of the equipment, school facility, or portion of the school facility may be made by a method other than the methods required by this section.*

2. The second type of emergency purchase provides for the acquisition of goods or services to meet an immediate need such as purchases to repair damage to a facility which may imperil students or the security of the facility. For example, if windows are broken at a school by vandals, an immediate need exists to not only secure the building, but also to protect the contents from damage by the elements. This type of emergency purchase is normally utilized after regular business hours or on weekends and holidays. After purchases of this type are made, a purchase order should be issued after the fact on the next business day.

Electrical, plumbing and waste water emergency repairs will be reviewed on a case by case basis by the Director of Purchasing & Warehouse Services, the Director of Maintenance and the Assistant Superintendent of Operations to determine if an emergency truly exists.

## **CONFLICT OF INTEREST**

Local Government Code Chapter 176 provides information regarding Conflict of Interest statements to be filed by vendors and certain school District employees.

The Texas Conflict of Interest statutes apply to the District's officers and elected officials. There are specific rules regarding what constitutes a conflict of interest in regards to a business transaction or real property transaction. For more information, please review the information provided on the Texas Ethics Commission website, [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

When selecting a vendor, remember that nothing shall be purchased from any person related by blood or marriage within the second degree to any person holding the position of director or above or to any employee in the Purchasing Department. Nothing shall be purchased from any firm that is controlled, owned, or operated by a District employee who has purchasing decision authority, a Board member, or from any person related as described here.

# **APPENDIX B**

## **CH (Legal & Local)**



PURCHASING AND ACQUISITION

CH  
(LEGAL)

<b>Table of Contents</b>	<b>Board Authority.....</b>	<b>3</b>
	Delegation of Authority .....	3
	<b>Purchases Valued at or Above \$50,000 .....</b>	<b>3</b>
	Factors .....	4
	<b>Out-of-State Bidders .....</b>	<b>5</b>
	<b>Required Contract Provisions.....</b>	<b>5</b>
	No Israel Boycott .....	5
	Retention of Contracting Information .....	5
	<b>Disclosure of Interested Parties.....</b>	<b>7</b>
	Exclusions .....	8
	Required Form .....	8
	Deadline .....	8
	Contract Changes .....	8
	Definitions .....	9
	<b>Contract with Person Indebted to District.....</b>	<b>10</b>
	<b>Notice Publication.....</b>	<b>10</b>
	<b>Electronic Bids or Proposals .....</b>	<b>10</b>
	<b>Professional Services.....</b>	<b>10</b>
	Professional Services Procurement Act.....	11
	Contingent Fee Contract for Legal Services .....	11
	<b>Emergency Damage or Destruction.....</b>	<b>12</b>
	<b>Computers.....</b>	<b>12</b>
	<b>Automated Information System .....</b>	<b>12</b>
	<b>Automated External Defibrillators .....</b>	<b>12</b>
	<b>Sole Source .....</b>	<b>12</b>
	<b>Insurance.....</b>	<b>13</b>
	Multiyear Contracts.....	13
	<b>Competitive Bidding .....</b>	<b>13</b>
	Opening Bids.....	13
	Safety Record.....	13
	Identical Bids .....	14
	<b>Competitive Sealed Proposals .....</b>	<b>14</b>
	Request for Proposals .....	14
	Opening Proposals .....	14

PURCHASING AND ACQUISITION

CH  
(LEGAL)

Selection .....	14
Best Value Determination .....	15
<b>Interlocal Agreements.....</b>	<b>15</b>
<b>State Purchasing Program .....</b>	<b>16</b>
District Requirements .....	16
<b>Multiple Award Contract Schedule .....</b>	<b>17</b>
<b>Cooperative Purchasing Program .....</b>	<b>17</b>
<b>Contract-Related Fee .....</b>	<b>17</b>
<b>Reverse Auction.....</b>	<b>18</b>
<b>Commitment of Current Revenue .....</b>	<b>18</b>
<b>Change Orders .....</b>	<b>18</b>
<b>Energy or Water Conservation Measures.....</b>	<b>19</b>
<b>Recycled Products.....</b>	<b>19</b>
<b>Agricultural Products .....</b>	<b>20</b>
Vegetation for Landscaping .....	20
<b>Bus Purchase or Lease .....</b>	<b>20</b>
<b>Right to Work .....</b>	<b>20</b>
<b>Lobbying Restriction—Tobacco Education Grant Funds .....</b>	<b>20</b>
<b>Criminal History .....</b>	<b>21</b>
<b>Impermissible Practices .....</b>	<b>21</b>
<b>Injunction.....</b>	<b>21</b>
<b>Prohibitions.....</b>	<b>22</b>
Entertainment Event Contracts .....	22
Taxpayer Resource Transactions.....	22
Prohibited Contracts.....	22

PURCHASING AND ACQUISITION

CH  
(LEGAL)

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**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB. For additional legal requirements applicable to school nutrition procurement, see COA.

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**Board Authority**

A board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

Delegation of  
Authority

A board may delegate its authority regarding an action authorized or required to be taken by a district by Education Code Chapter 44, Subchapter B, to a designated person, representative, or committee.

A board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.

*Disaster  
Exception*

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

*Education Code 44.0312*

**Purchases Valued at  
or Above \$50,000**

All district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. The reverse auction procedure as defined by Government Code 2155.062(d).
6. The formation of a political subdivision corporation under Local Government Code 304.001 (purchase of electricity).

*Education Code 44.031(a)*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

[See COA for requirements applicable to school nutrition purchases, including produce, using federal funds.]

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**Note:** Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC and CVD for contracts using a construction manager; CVE for design/build contracts; and CVF for job order contracts for minor repairs/alterations.

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Factors

In awarding a contract, a district shall consider:

1. Purchase price.
2. The reputation of the vendor and of the vendor's goods or services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with laws relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the goods or services.
8. For a contract that is not for goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

*Education Code 44.031(b)*

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.)

**Out-of-State Bidders**

A board shall not award a contract for services or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003–.004*

**Required Contract Provisions**

No Israel Boycott

A district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract.

The requirement above applies only to a contract that:

1. Is between a district and a company with ten or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the district.

*Gov't Code 2271.002*

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship. *Gov't Code 2271.001(2)*

Retention of  
Contracting  
Information  
*Application*

These provisions apply to a contract that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the district; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.

A board may not accept a bid for a contract described above or award the contract to an entity that the board has determined has

PURCHASING AND ACQUISITION

CH  
(LEGAL)

knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J (Additional Provisions Relating to Contracting Information) in a previous bid or contract described above unless the board determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of that subchapter. [For additional information and requirements, see GBA and GBAA.]

*Requirements*

A contract described above must require a contracting entity to:

1. Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the district for the duration of the contract;
2. Promptly provide to the district any contracting information related to the contract that is in the custody or possession of the entity on request of the district; and
3. On completion of the contract, either:
  - a. Provide at no cost to the district all contracting information related to the contract that is in the custody or possession of the entity; or
  - b. Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the district.

*Bid and Contract Language*

Except as described at Exception, below, a bid for a contract described above and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

*Notice of Noncompliance*

A board that is the party to a contract described above shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of Government Code Chapter 552, Subchapter J applicable to the entity. The notice must:

1. Be in writing;
2. State the requirement that the entity has violated; and
3. Unless the exception described below applies, advise the entity that the board may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the tenth business day after the date the board provides the notice.

PURCHASING AND ACQUISITION

CH  
(LEGAL)

*Contract  
Termination*

Except as provided below, a governmental body may terminate a contract described above if:

1. The board provides the required notice to the entity that is party to the contract;
2. The contracting entity does not cure the violation in the prescribed period;
3. The board determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Government Code Chapter 552, Subchapter J; and
4. The board determines that the entity has not taken adequate steps to ensure future compliance with the requirements of that subchapter.

An entity has taken adequate steps to ensure future compliance with Government Code Chapter 552, Subchapter J if:

1. The entity produces contracting information requested by the board that is in the custody or possession of the entity not later than the tenth business day after the date the board makes the request; and
2. The entity establishes a records management program to enable the entity to comply with Government Code Chapter 552, Subchapter J.

Exception

A board may not terminate a contract under these provisions if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

*Gov't Code 552.371(a), .372–.374 [See GBA]*

**Disclosure of  
Interested Parties**

A district may not enter into a contract described below with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.

The requirement above applies only to a contract of a district that:

1. Requires an action or vote by the board before the contract may be signed;
2. Has a value of at least \$1 million; or
3. Is for services that would require a person to register as a lobbyist under Government Code Chapter 305.

*Gov't Code 2252.908*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

A contract does not require an action or vote by the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. *1 TAC 46.1(c)*

Exclusions

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

*Gov't Code 2252.908(c)(4)–(6)*

Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). *Gov't Code 2252.908(e); 1 TAC 46.5(a)*

The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the district that is the party to the contract for which the form is being filed. *1 TAC 46.5(b)*

Deadline

A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. *1 TAC 46.5(c); Gov't Code 2252.908(f)*

Contract Changes

The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.

The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:

1. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least \$1 million; or



PURCHASING AND ACQUISITION

CH  
(LEGAL)

2. The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract.

*1 TAC 46.4*

Definitions

“Contract” means a contract between a board and a business entity at the time it is voted on by the board or at the time it binds the board, whichever is earlier, and includes an amended, extended, or renewed contract. *1 TAC 46.3(a)*

“Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. The term includes an entity through which business is conducted with a district, regardless of whether the entity is a for-profit or nonprofit entity, and does not include a governmental entity or state agency. *Gov’t Code 2252.908(a)(1); 1 TAC 46.3(b)*

“Interested party” means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. *Gov’t Code 2252.908(a)(3); 1 TAC 46.3(d), (e)*

“Controlling interest” means:

1. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds ten percent;
2. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten members; or
3. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This subsection does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

*1 TAC 46.3(c)*

“Signed” includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. *1 TAC 46.3(f)*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

“Value” of a contract is based on the amount of consideration received or to be received by a business entity from a board under the contract. *1 TAC 46.3(g)*

[See BBFA for additional conflict of interest disclosures.]

**Contract with Person  
Indebted to District**

A board may, by resolution, establish regulations permitting a school district to refuse to enter into a contract or other transaction with a person indebted to the school district. A district may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

The term “person” includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with a district requiring board approval.

*Education Code 44.044*

**Notice Publication**

Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where a district’s central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district’s central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

**Electronic Bids or  
Proposals**

A district may receive bids or proposals through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

*Education Code 44.0313*

**Professional  
Services**

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent.

PURCHASING AND ACQUISITION

CH  
(LEGAL)

A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

*Education Code 44.031(f)*

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

Professional  
Services  
Procurement Act  
*Selection*

A district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.003(a)*

*Definition*

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse; or
3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code 1053.

*Gov't Code 2254.002*

Contingent Fee  
Contract for Legal  
Services

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services entered into under Tax Code 6.30 (delinquent tax collection) or Government Code 1201.027 (issuance of public securities), except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract. *Gov't Code 2254.102*

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code

PURCHASING AND ACQUISITION

CH  
(LEGAL)

2254.003(a) [see Selection, above] and Government Code  
2254.1032. *Gov't Code 2254.1032(a)*

**Emergency Damage  
or Destruction**

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

**Computers**

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts with the DIR in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

**Automated  
Information System**

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

**Automated External  
Defibrillators**

A school that purchases or leases an automated external defibrillator, as defined by Health and Safety Code 779.001, shall ensure that the defibrillator meets standards established by the federal Food and Drug Administration. *Education Code 44.047*

**Sole Source**

Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:

1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

*Education Code 44.031(j)–(k)*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

**Insurance**

A contract for the purchase of insurance is a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031. *Education Code 44.031; Atty. Gen. Op. DM-347 (1995)*

**Multiyear Contracts**

A district may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at Commitment of Current Revenue, below. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

**Competitive Bidding**

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a school district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Factors, above].

Except as provided below, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under this policy.

*Education Code 44.0351*

**Opening Bids**

Bids may be opened only by a board at a public meeting or by an officer or employee of a district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. *Local Gov't Code 271.026*

A board shall have the right to reject any and all bids. *Local Gov't Code 271.027(a)*

**Safety Record**

In determining who is a responsible bidder, a board may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution, provided that:

1. The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.

PURCHASING AND ACQUISITION

CH  
(LEGAL)

2. The board has given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.
3. The determinations are not arbitrary and capricious.

*Local Gov't Code 271.0275*

Identical Bids

If a district receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.

If only one of the bidders submitting identical bids is a resident of a district, that bidder shall be selected. If two or more such bidders are residents of a district, one shall be selected by the casting of lots. In all other cases, one of the identical bids shall be selected by the casting of lots.

A board shall prescribe the manner of casting lots and shall be present when the lots are cast. All qualified bidders or their representatives may be present at the casting of lots.

*Local Gov't Code 271.901*

**Competitive Sealed Proposals**

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a school district shall follow the procedures prescribed below.

Request for Proposals

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Opening Proposals

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Selection

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror.

PURCHASING AND ACQUISITION

CH  
(LEGAL)

and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Best Value  
Determination

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

*Education Code 44.0352*

**Interlocal  
Agreements**

To increase efficiency and effectiveness, a district may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. *Gov't Code 791.001, .011, .025*

An interlocal contract must be authorized by a board and the governing body of each contracting party; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed and may have a specified term of years.

*Gov't Code 791.011(d)–(f), (i)*

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.

A district that purchases goods and services by agreement with another local government or with the state or state agency satisfies the requirement to seek competitive bids for the purchase of goods and services.

*Gov't Code 791.025(b)–(c); Atty. Gen. Op. JC-37 (1999)*

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of

PURCHASING AND ACQUISITION

CH  
(LEGAL)

plans and specifications under Chapter 1001 or 1051, Occupations Code; or

2. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

*Gov’t Code 791.011(j)*

**State Purchasing Program**

Purchasing services performed for a district by the comptroller shall include:

1. The extension of state contract prices to a district when the comptroller considers it feasible.
2. Solicitation of bids on items desired by a district if the solicitation is considered feasible by the comptroller and is desired by the district.
3. Provision of information and technical assistance to a district about the purchasing program.

The comptroller may charge a district its actual costs in providing purchasing services.

*Local Gov’t Code 271.082*

**District Requirements**

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the board shall:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract.
2. Direct the decisions of its representative.
3. Be responsible for:
  - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
  - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending the comptroller reports on actual purchases.



PURCHASING AND ACQUISITION

CH  
(LEGAL)

4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

*Local Gov't Code 271.083*

**Multiple Award  
Contract Schedule**

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502*

A district may purchase goods or services directly from a vendor under a contract listed on a schedule. A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (purchase of information technology commodity items) [see Automated Information System, above]. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule.

*Gov't Code 2155.504*

**Cooperative  
Purchasing Program**

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. If a district does so, it may sign an agreement with another participating local government or a local cooperative stating that the district will:

1. Designate a person to act on behalf of the district in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

If a district participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

*Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)*

**Contract-Related Fee**

A school district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter

PURCHASING AND ACQUISITION

CH  
(LEGAL)

F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The commissioner of education may audit the written report.

*Education Code 44.0331*

**Reverse Auction**

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. *Local Gov't Code 271.906(b)*

Reverse auction procedure means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

*Gov't Code 2155.062(d)*

**Commitment of  
Current Revenue**

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to the board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract.

*Local Gov't Code 271.903*

**Change Orders**

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or in-

PURCHASING AND ACQUISITION

CH  
(LEGAL)

crease the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

*Education Code 44.0411*

**Energy or Water  
Conservation  
Measures**

A district may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.

A board shall establish a long-range energy plan to reduce a district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.

*Education Code 44.901–.902* [See policy CL for legal requirements pertaining to such contracts and plans.]

**Recycled Products**

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.
2. Encourage the use of products made of recycled materials.
3. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.

PURCHASING AND ACQUISITION

CH  
(LEGAL)

The Texas Commission on Environmental Quality (TCEQ) by order shall exempt from compliance with these provisions a district with a student enrollment of fewer than 10,000 students.

*Health and Safety Code 361.426*

**Agricultural  
Products**

If the cost and quality are equal, a district shall give preference in purchasing to agricultural products, including textiles and other similar products, that are produced, processed, or grown in Texas. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If Texas agricultural products are not equal in cost and quality to other agricultural products, a district shall give preference in purchasing to agricultural products produced, processed, or grown in the United States, if the cost and quality of the U.S. and foreign products are equal.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

Vegetation for  
Landscaping

If cost is equal and the quality is not inferior, a district shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.

*Education Code 44.042*

**Bus Purchase or  
Lease**

Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. *Education Code 44.031(l)* [See CNB]

**Right to Work**

While engaged in procuring goods and services or awarding a contract, a district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

*Education Code 44.043*

**Lobbying  
Restriction—  
Tobacco Education  
Grant Funds**

A district may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:

1. Lobbying expenses incurred by the district;

PURCHASING AND ACQUISITION

CH  
(LEGAL)

2. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission;
3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2); or
4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

*Gov't Code 403.1067*

**Criminal History**

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

**Impermissible Practices**

A board member, employee, or agent shall not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in Education Code 44.031. An officer or employee shall not knowingly violate Education Code 44.031 in any other manner.

"Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. "Sequential purchases" means purchases, over a period, of items that in normal purchasing practices would be made in one purchase.

Violation of this provision is a Class B misdemeanor and an offense involving moral turpitude, conviction of which shall result in removal from office or dismissal from employment. A board member who is convicted of a violation of this provision is considered to have committed official misconduct and for four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision, and is ineligible to receive any compensation through a contract with the state or a political subdivision. [See BBC]

*Education Code 44.032*

**Injunction**

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which a district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this

PURCHASING AND ACQUISITION

CH  
(LEGAL)

subsection is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

**Prohibitions**

Entertainment  
Event Contracts

A person, including a board, may not include a provision in a contract related to a parade, concert, or other entertainment event paid for in whole or in part with public funds that prohibits or would otherwise prevent the disclosure of information relating to the receipt or expenditure of public or other funds by a board for the event. A contract provision that violates Government Code 552.104(c) is void. *Gov't Code 552.104(c)* [See GBA for information related to competition or bidding.]

Taxpayer Resource  
Transactions

A district may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider. *Gov't Code 2272.003(a)*

"Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.

"Affiliate" means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

1. Common ownership, management, or control between the parties to the relationship;
2. A franchise granted by the person or entity to the affiliate; or
3. The granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

*Gov't Code 2272.001(3), (5)*

Prohibited  
Contracts

For provisions regarding other prohibited contracts, see CV(LEGAL).

PURCHASING AND ACQUISITION

CH  
(LOCAL)

**Purchasing  
Authority**

The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. A continuing purchase under a Board-approved bid or contract does not require Board approval.

**Purchasing Method**

The Board delegates to the Superintendent or designee the authority to determine the method of purchasing in accordance with CH(LEGAL) or CBB(LEGAL), as appropriate.

*Competitive  
Bidding*

If competitive bidding is chosen as the purchasing method, the Superintendent or designee shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The District may reject any and all bids in accordance with state or federal law, as applicable.

*Competitive  
Sealed Proposals*

If competitive sealed proposals are chosen as the purchasing method, the Superintendent or designee shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals in accordance with state or federal law, as applicable.

**Electronic Bids or  
Proposals**

Bids or proposals that the District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

**Responsibility for  
Debts**

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made

PURCHASING AND ACQUISITION

CH  
(LOCAL)

in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

**Purchase  
Commitments**

All purchase commitments shall be made by the Superintendent or designee in accordance with administrative procedures, including the District's purchasing procedures.

**Personal Purchases**

District employees shall not be permitted to make purchases for personal use through the District's purchasing office.



# **APPENDIX C**

## **Federal Funds**

**Contact the Director of Federal Funds**

## **APPENDIX D**

### **Forms & additional info**

**All forms & “how to” are on the  
Purchasing webpage**