Chapter 109. Budgeting, Accounting, and Auditing

Subchapter D. Uniform Bank Bid or Request for Proposal and Depository Contract

§109.52. Uniform Depository Bank Contract and Surety Bond Forms.

(a) Each school district must use the uniform depository contract form as provided in subsection (b) of this section. The district must complete the form and file it electronically with the Texas Education Agency (TEA) as specified in the Texas Education Code (TEC), §45.208, and in accordance with filing instructions provided on the TEA website.

(b) This subsection provides the uniform depository contract form, entitled "Depository Contract for Funds of Independent School Districts under the Texas Education Code, Chapter 45, Subchapter G, School District Depositories."

Figure: 19 TAC §109.52(b)

(c) If a district's depository elects a surety bond to secure the district's deposit amounts less any applicable Federal Deposit Insurance Corporation insurance, the depository must complete the surety bond form provided in subsection (d) of this section, attach it to the contract, and file it with the district. The district must file a copy of the contract and the surety bond form with the TEA as specified in the TEC, §45.208, and in accordance with filing instructions provided on the TEA website.

(d) This subsection provides the uniform surety bond form, entitled "Texas School Depository Surety Bond Form."

Figure: 19 TAC §109.52(d)

(e) If the TEA receives a contract form and determines that it is incomplete, the TEA will notify the district.

(f) A district that has no current depository contract in force and filed with the TEA will receive its warrants from the TEA by US mail.

(g) For depository contract filing requirements for charter schools, refer to §100.1043 of this title (relating to Status and Use of State Funds; Depository Contract).
Depository Contract for Funds of Independent School Districts under the Texas Education Code, Chapter 45, Subchapter G, School District Depositories

State of Texas County of _____________

County-District Number

Article I. The ________________________________ referred to in this contract as the “District,” is located in _______________ County, Texas. The board of trustees of the District has selected ________________________________ referred to in this contract as the “Depository,” to serve as the Depository of the school funds of the District (or if there are tie bids or proposals as defined in the Texas Education Code [TEC], as one of the Depositories). This selection was made in accordance with the TEC, Chapter 45, Subchapter G. The Depository will serve under this contract for a two-year term starting with the fiscal year beginning _____________ and ending ____________, and until its successor is selected and has qualified unless this contract is terminated sooner by the Depository’s failure to adhere to all requirements of the TEC and of this contract. The school funds of the District include all school funds except those permitted by law to be deposited or invested otherwise at the sole discretion of the District’s board of trustees.

The Depository is located at ________________________________ in _______________ County, State of Texas, and is a bank as defined in the TEC, §45.201.

Article II. The District selected the Depository based on the Depository’s written bid or proposal submitted as provided by State Board of Education rule. The District determined that the Depository’s written bid or proposal was the best, or equal to the best, among _______________ bids or proposals submitted to the District and opened on _______________. The bid or proposal is incorporated in this contract by reference.

This contract is subject to the TEC and any amendments to it and to any acts of the Texas Legislature that affect public moneys held by the District during the term of this contract.

Article III. The Depository has elected a method to adequately protect the funds of the District deposited with the Depository in accordance with the TEC, §45.208, and a copy of the election is attached to this contract and incorporated by reference.

Article IV. A. The TEC, §45.205, requires that this contract and any extension of this contract coincide with the District’s fiscal year. If the District changes its fiscal year in accordance with the TEC, §44.0011, the parties may agree to shorten or extend the two-year term of the contract by no more than one year to coincide with the end of the new fiscal year, provided that this contract remains in effect until the Depository’s successor is selected and has qualified. If the parties cannot agree, the District has the option to change the term of this contract to coincide with the end of a new fiscal year closest to its original expiration date.

B. The District and the Depository may agree to extend this contract for two additional two-year terms in accordance with the TEC, §45.205(b). An extension under this subsection is not subject to the requirements of the TEC, §45.206.

C. The District must electronically file this contract and any additional two-year extension of this contract with the Texas Education Agency.

D. The Depository must allow the District to purchase time deposits that mature after the ending date of this contract; however, the Depository may apply new interest rates to the time deposits after the ending date of this contract. The District is entitled to withdraw these time deposits without penalty when this contract expires. But in that event, the Depository will be obligated only to pay interest rates comparable to rates offered in the contract for the term the time deposits were actually held. The Depository may impose an early withdrawal penalty on a time deposit withdrawn within six days of creation of the deposit, to the extent required to comply with federal regulations defining time deposits.

E. If a contractual dispute results in litigation between the Depository and the District, the trial will be held in the county in which the District has its central office, but only if this venue designation is not considered to be a waiver of any immunity that either party to this contract may be entitled to claim.

Article V. The District and the Depository execute this contract and each retain a copy, both of which are considered to be originals, and file the contract with the TEA electronically as specified in Article IV, item C, above.
To Be Completed by the District and Verified by the Depository
(For all funds received from the Texas Education Agency)

Routing Transit Number
(Must be 9 digits)

Type of Account:

Account Number
(Up to 13 digits)

Check One:

____ Checking (22)
____ Savings (32)

__ Check here if the TEA currently sends funds to an investment pool and no change is required in routing of funds.

Please note that the account information above must match the current direct deposit information on file with the Texas Education Agency, Accounting Division. If the District is changing the current direct deposit information, the District must submit a Vendor Direct Deposit Authorization form along with the depository contract.

Agreed and accepted on behalf of the District this _______ day of ________________________________________________, ___________

_______________________________________________
Signature of President of School Board

Agreed and accepted on behalf of the Depository this _______ day of ________________________________________________, ___________

________________________________________________
Typed Name of Depository

________________________________________________
Signature of Authorized Officer

________________________________________________
Title of Authorized Officer

Acknowledgment

Acknowledged before me in _______________________ County, Texas, on ___________________________, 20____, by ____________________________, bank officer of the Depository named in the preceding document, for the Depository.

________________________________________________
Signature of Notary

(SEAL)

Notary Public in and for ________________________________
County, Texas
In accordance with Article III of the Depository Contract for Funds, the Depository has elected to use the following method(s) to protect the funds of the District:

___ Surety bond (TEC, §45.208(b))

___ Deposit or pledge securities (TEC, §45.208(f))

A. If the Depository elected to file with the District a corporate surety bond, then the corporate surety bond is in an initial amount of $____________________, which is equal to the estimated highest daily balance of the District funds determined by the board of trustees of the District to be on deposit with the Depository during the term of this contract. The corporate surety bond is executed in the form and with the content prescribed by State Board of Education rule. A fully executed copy of the corporate surety bond is attached to and made a part of this contract by reference, provided further that:

1. the initial amount of the corporate surety bond may rise or fall from day to day so long as all deposits of the District are fully protected;
2. the bond is made payable to the District and is signed by the Depository and the surety company authorized to do business in this state;
3. the bond and the surety on the bond are approved by the board of trustees of the District;
4. the bond exists under the condition that the Depository must:
   a. faithfully perform all duties and obligations required by law and this contract;
   b. pay on presentation all checks or drafts ordered according to law by the District’s board of trustees;
   c. pay on demand any demand deposit in the Depository;
   d. pay any time deposit after the required notice period expires;
   e. faithfully keep school district funds and account for the funds according to law; and
   f. faithfully pay over to the successor depository all balances remaining in the account; and
5. the District may not pay a premium on the depository bond out of school district funds.

B. If the Depository did not elect to make the corporate surety bond in the amount and as referred to in A, above, then the Depository must either deposit or pledge with the District, or with a trustee designated by the District, approved securities as defined in the TEC, §45.201. The pledged or deposited securities must meet the following conditions:

1. The pledged securities must be approved securities and authorized by law and must be in a total market value sufficient to protect the funds of the District on deposit as directed at any time by the District in accordance with standards acceptable to the Texas Education Agency.
2. The pledge of approved securities must be waived only to the extent of the exact dollar amount of Federal Deposit Insurance Corporation insurance protection for the District’s funds on deposit with the Depository from day to day, and if the insurance protection ends, this contract must immediately become void except as provided in (4) below.
3. The conditions of the pledge of approved securities required by this contract are that the Depository must:
   a. credit the account(s) of the District with the full amount of all State of Texas warrants presented to the Depository for the District’s account no later than the next banking day after the day the Depository receives the warrants credit the account(s) of the District with the full amount of electronically transferred funds on the effective settlement date;
   b. faithfully perform all duties and obligations required by law and this contract;
   c. pay upon presentation all checks or drafts ordered according to law by the District’s board of trustees;
   d. pay upon demand any demand deposit of the District in the Depository;
   e. pay any time deposit or certificate of deposit upon maturity or after the required notice period expires;
   f. faithfully keep school district funds and account for the funds according to law; and
   g. faithfully pay over to the successor depository all balances of funds remaining in the account.
4. The pledge of approved securities required by this contract must continue until either this contract ends or the Depository fulfills all its duties and obligations arising out of this contract, whichever is later. And a continuing security interest in the District’s favor must immediately apply to any pledge to all proceeds of sale and to all substitutions, replacements, and exchanges of the securities, and in no event may this continuing security interest be voided by any act of the Depository; however, the Depository will have the right, with the District’s consent, to purchase and sell, and substitute or replace with other approved securities, any of the approved securities pledged under this contract, provided that the Depository adheres to all the other conditions of this contract, and the pledge is in addition to all other remedies available in law to the District.
5. The Depository must immediately furnish or cause to be furnished to the District original and valid safekeeping or trust receipts issued by the custodian holding the approved securities pledged under this contract, marked on their face by the custodian to show the pledge and market value as required above, and the Depository must upon the District’s request provide a description of securities being pledged and evidence that the securities are legally acceptable in accordance with (1) above.
6. The District may examine and verify at any reasonable time a pledged investment security or a record that a custodian maintains in accordance with the Texas Government Code, §2257.061. The District or its agent may inspect at any time an investment security evidenced by trust receipt.
7. Upon any closing or failure of the Depository, or any event considered by a state or federal regulatory agency to constitute a closing or failure of the Depository, title to all securities pledged under this depository contract must be considered to be vested in, and to be held by
the District. The District is empowered to take immediate possession of and to sell any such pledged securities, whether in safekeeping at
another bank or in possession of the District or the Depository, and the District is specifically so empowered by execution of this contract.

(8) The collateral pledge agreement must conform to Title 12 United States Code Annotated, §1823(e), so to defeat the claim of the Federal
Deposit Insurance Corporation, its successor, or any other receiver to the securities, and be:
(a) in writing;
(b) executed by the Depository at the same time the asset is acquired;
(c) approved by the Depository’s board of directors or loan committee, with the approval reflected in the board’s or committee’s minutes;
and
(d) maintained continuously from the date of its execution as an official record of the Depository.

The Depository must furnish the minutes of the Depository’s board of directors or loan committee to the District.

C. If the Depository elects to give both a corporate surety bond and to pledge approved securities, the corporate surety bond and pledged approved
securities must be in an aggregate amount that, together with applicable Federal Deposit Insurance Corporation insurance, will adequately
protect the total amount of District funds on deposit with the Depository from day to day. The provisions of A, above, permitting the amount of the
corporate surety bond to rise or fall from day to day, and all the provisions of B, above, relating to the amount and conditions of pledge of
approved securities, including but not limited to substitution and conditions of pledge, apply to the election permitted by this paragraph C.

D. The Depository agrees to cover by corporate surety bond, pledge of approved securities, or both an amount that is equal to funds anticipated to
be on deposit from day to day, which is estimated not to exceed $_________________. The amount of collateral will be calculated in
accordance with the Texas Government Code, Chapter 2257, Collateral for Public Funds Act.

E. After the beginning date of this contract if the amount of deposit exceeds that which is initially covered by corporate surety bond, pledged
approved securities, and FDIC insurance, the amount covered will be increased, and original and valid safekeeping or trust receipts of the
additional securities, increased corporate surety bond, or both will be provided in accordance with the TEC and Texas Education Agency rules.
Texas School Depository Surety Bond Form

Bond Number ________________________________

I. Guarantee

1. Under all the terms and conditions of this bond, __________________________ (referred to in this document as the Surety Company) and __________________________ (referred to in this document as the Bank) agree that:
   a. the Bank will pay a premium to the Surety Company and
   b. the Surety Company will guarantee the deposits in certain Designated Depository Accounts in the Bank, in excess of the $250,000.00 deposit insurance provided by the Federal Deposit Insurance Corporation (FDIC).

2. The Surety Company must promptly reimburse the Owner(s) of a Designated Depository Account or Accounts (referred to in this document as the Owner) up to a limit of liability as specified in Section III of this bond if the Bank becomes insolvent and fails.

3. “Becomes insolvent and fails” means that either:
   a. the Bank must be taken over by a regulatory authority, either state or federal, and ordered liquidated or
   b. the FDIC must sell the Bank’s deposits in such a manner that the FDIC refuses to sell or reimburse the deposits in excess of the $250,000.00 deposit insurance.

II. Designation of Account Owner and Depository Account(s)

Designated Owner of the Depository Account(s):

[________________________ Independent School District (ISD)].

Address of the Owner:

__________________________________________________________________
III. Limit of Liability

The Surety Company’s total liability under this bond is [written dollar amount $XXXXXXXX], which is the maximum guaranteed amount. Regardless of the number of Owners and the number of Designated Depository Accounts, the maximum amount of payment under this bond must not exceed $XXXXXXXX.

IV. Payment of Loss

If the Bank should be declared insolvent and fail, the Surety Company must pay the Owner of the Designated Depository Account(s) for which this bond has been issued the amount that the receiver’s certificate indicates to be uninsured by the FDIC. The amount of the payment is limited to the maximum guaranteed amount specified in Section III of this bond. This bond does not cover any indirect or consequential damages or loss. The Surety Company must pay the Owner promptly upon receiving assignment of the receiver’s certificate from the Owner or upon demand.

V. Termination or Cancellation

This bond becomes effective at 12:01 a.m. on [date] and remains in effect until terminated or canceled for any of the following reasons:

1. The Surety Company cancels the bond for nonpayment of the annual premium 15 days after notifying the Bank of the nonpayment and impending cancellation.

2. The Owner notifies the Surety Company in writing of the Owner’s desire to cancel the bond, and the Surety Company cancels the bond immediately.

3. The Surety Company desires to cancel the bond for reasons allowed by the laws of Texas.
   a. The Surety Company sends a written notice by facsimile transmission, hand delivery, or certified mail, return receipt requested to the Bank and to the Owner’s address as shown on this bond. The notice is considered effective upon receipt by the parties to whom the notice is addressed.
   b. The cancellation is effective 90 days after the notice is effective.

4. This bond is automatically terminated if all funds in the Designated Depository Account(s) listed in Section II of this bond are withdrawn, the account(s) are closed, or both.

If this bond is canceled or terminated, the Surety Company has no obligation to make any payment to any Owner.
VI. Responsibility of the Bank

It is understood and agreed that this bond is for and on behalf of the Bank to enable the Bank to protect the Owner of its Designated Depository Account(s). All designations of accounts are the complete responsibility of the Bank. The Surety Company’s liability to the Owner begins upon the declaration of insolvency and failure of the Bank, and not before that event. In addition, under the Texas Education Code, §45.208, the Surety Company and the Bank agree that the Bank must:

1. faithfully perform all duties and obligations required by law,
2. pay on presentation all checks or drafts ordered according to law by the district’s board of trustees,
3. pay on demand any demand deposit in the Bank,
4. pay any time deposit of the school district after the required notice period expires,
5. faithfully keep the school district funds and account for the funds according to law, and
6. faithfully pay over to any successor depository all balances remaining in the accounts of the Bank.

VII. Consolidation or Merger

This bond becomes void at 12:01 a.m. on the date the Bank consolidates with or merges into any other bank or financial institution. The Bank must notify the Surety Company and the Owner 90 days before any consolidation or merger of the Bank’s intention to merge into another bank or financial institution. Any deposits in the Designated Depository Account(s) in excess of the $250,000.00 FDIC deposit limit must be guaranteed by a new bond or other means as authorized by Texas law at the time of the consolidation or merger.
VIII.  
Sole Use and Benefit

This bond is for the sole use and benefit of the Owner. This bond is nonnegotiable and may not be assigned under any circumstances by the Owner or any other person, entity, or holder. The Bank may not be considered an agent or representative of the Surety Company for any purpose in connection with this bond.

Signed, sealed, and dated this _______ day of _______________, _________.

[Bank] [Surety Company]
(Address) (Address)
(Phone) (Phone)

By______________________________ By__________________________________

Title_____________________________ Title_________________________ _______

Acknowledgment

Acknowledged before me in ________________ County, Texas, on _______________, 20___, by _________________________, officer of the Bank named in the preceding document, for the Bank, and by _________________________, officer of the Surety Company named in the preceding document, for the Surety Company.

______________________________ Signature of Notary
(SEAL)

Notary Public in and for ________________
County, Texas
My Commission Expires_______________
Surrender of Bond Form

By signature below of the Owner, the Owner gives notice to the Surety Company of the Owner’s desire to cancel Bond Number _______________ in its entirety.

By________________________________________

Date_______________________________________

OR

Surrender of Bond for Reissuance Form

By signature below of the Owner, the Owner gives notice to the Surety Company of the Owner’s desire to cancel Bond Number _______________ in its entirety, on the condition that another similar bond is issued with the following listed Owner, Owner address, Designated Depository Account Number(s) and limit of liability:

Requested Designated Depository Account Owner:

Address of Requested Designated Owner:

Requested Designated Depository Account Number(s):

Requested Limit of Liability:

By________________________________________

Date_______________________________________

Last Modified: 12/12/2013