

Financial Accountability System Resource Guide, Update [~~19~~]20

## **Module 5: Purchasing**

Texas Education Agency

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## Financial Accountability System Resource Guide, Update ~~19~~20

### Module 5: Purchasing

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# Introduction to the Structure of Each Section

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## FASRG Section Rules, Definition of References, and Best Practice Comments Information

The Financial Accountability System Resource Guide (FASRG) describes the rules of financial accounting for school districts, charter schools, and education service centers. FASRG is adopted by [19 Texas Administrative Code \(TAC\) §109.41](#). Many of the topics correlate and match the headings found in a district's legal policy.

Within this document, the reader will find information on many procurement topics related to school district purchasing that may or may not be called out specifically within a TAC rule. Relevant statutory, rule, and/or policy requirements will be defined for each section.

At the end of each section or subsection, the following three additional items will be listed below the topic and guidance as applicable.

### *FASRG Section Rule*

The Texas Education Agency (TEA), the regulatory agency for Texas public and charter school districts, establishes governing rules through the [19 TAC Chapter 109](#). If a rule has been established within a section, this is considered mandatory for the school district to follow. Failure to follow the rule is considered non-compliance.

### *Local Policy Suggestions*

A section may include suggested local policy language based on the associated topic. These suggestions are not considered mandatory, but the wording may be considered for thorough, efficient processes within local policies, regulations, or exhibits.

### *Best Practice Comment*

If a section includes a best practice comment, it is not mandatory, but considered a process that a school district should consider implementing. School districts may also consider a modified version of the process for their local procedures. Utilizing a suggested best practice is considered an optional action.

## 5.1 Overview

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### *References: None*

A major management process supporting financial accountability in Texas public schools is the purchasing function. Purchasing has several links to overall accountability initiatives, including the following:

- Strategic link. The overall mission of purchasing is to use available fiscal resources to obtain the maximum product or service for the resources expended resulting in best value.
- Operational link. Purchasing supports instructional delivery, administration, and other services. Performance and goal achievement throughout the school district depends on its effectiveness.
- Tactical link. The purchasing process influences day-to-day financial functions including budget management, accounting, and accurate financial reporting.

Purchasing in the public sector environment presents numerous challenges including the following:

- The requirement to comply with numerous statutes, policies, legal interpretations, and procedures. The complexity of these requirements demands not only knowledge of purchasing laws and standards, but also compliance in implementing a purchasing system that also meets user needs.
- The dynamic and diverse nature of the public education organizational environment. School districts are complex organizations with diverse functions. Although instruction is the heart of the organization, numerous other services—ranging from custodial services to food service to tax collection—support the overall educational mission. Purchasing is a lifeline for all these service areas. These distinct organizational units need a procurement process that is responsive to those needs.
- The competition among vendors for school district business. The strong competition among vendors for school district business is critical for best value and transparency but may create pressure on school district personnel for product selection, bid or proposal awards, and dispute resolution. Most school districts seek to foster both good vendor relations and strong competition while balancing them with objective purchasing decisions and remaining transparent.
- The consistent oversight by interest groups. School district purchasing is scrutinized by diverse groups including the public, the media, state and federal agencies, and auditors. Strict adherence to established guidelines and consistency in record keeping, documentation, and execution of procedures, assists the school district in withstanding this scrutiny. Transparency in all processes should be maintained.
- The many "gray" areas relating to purchasing methods and procedures. With the broad scope of purchases required within a district, complex and diverse needs create challenges for districts to determine the appropriate/best purchasing methods. Ever-changing legislative, executive, and judicial decisions at both the state and federal levels further complicate the procurement process. It is critical to remain abreast of the fluid nature of these changes. With multiple agencies and oversight, there can be opposing rules that will need to be reviewed prior to a final determination for process decisions.

To meet these challenges, this module provides tools for managing the purchasing process by examining the following:

- Purchasing process describes the actual process for goods and services procurement, including the initiation or request and purchase order creation, vendor selection and relations, and merchandise receiving processes.
- Competitive procurement options address competitive procurement processes, including legal requirements for procurement through award of contracts.
- Cooperative purchasing provides a review of cooperative purchasing arrangements and the potential ways they can benefit school districts.
- Other interlocal agreements as provided by law between two local governments are explained.

Design and implementation of certain purchasing processes result in more successful school district operations. Although not all inclusive, these processes include the following:

- Planning and coordination. The school district should develop a comprehensive plan to determine how various purchasing methods will be implemented and the timing of key activities such as annual bid or proposal requirements. Responsibility for coordination of purchasing activities should be assigned to a responsible administrator to ensure that needs are met.
- Purchasing infrastructure development. Comprehensive policies and procedures, implementation of processes to support these procedures, ongoing training of users, and monitoring of the overall purchasing function to ensure sound operations require careful development.
- User responsiveness. To operate successfully, the purchasing function must be responsive. This includes ensuring that communication lines are open and a user perspective is incorporated into all processes.
- Consistent compliance with requirements. The school district should ensure that enforcement mechanisms for laws, regulations, policies, and ethical standards are in place and monitored.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

School districts should consider the following language/processes for local policy, regulations, and/or exhibits:

- establishment of a purchasing process (requisition process through purchase order) that includes segregation of duties
- an approval process as mandated by fiscal authorities or assigned designees that establishes fiscal compliance
- establishment of district needs and commodity areas for aggregate purposes as deemed by law, both federal and state
- establishment of receiving processes for completion of the purchasing process

#### *Best Practice Comment*

There are no best practices for this section.

## 5.2 Purchasing Ethics

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*References:* [Texas Education Code \(TEC\), §44.032](#); [Texas Local Government Code, Chapter 171, Chapter 176](#), and [§271.029](#); [Texas Government Code, §2155.062\(d\)](#); [Texas Penal Code, Chapter 36](#)

The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require that ethical standards be incorporated into the foundation of all purchasing functions. Purchasing personnel and school district staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

Ethics relating to conflicts of interest, financial interests in firms conducting business with the school district, kickbacks and gratuities, and improper use of a position or confidential information should be clearly communicated throughout the school district. Additionally, school district personnel should be made aware of the penalties for violations of purchasing laws and ethics, which may include criminal

prosecution and loss of employment opportunities. Personnel considered held to the highest standards include board trustees, superintendents, or other person designated as an executive officer of the district, and any employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor.

Areas to consider within the district include the following:

- School district staff should be familiar with the numerous district policies related to conflict of interest and ethical behaviors.
- Annual review of these policies is suggested and should be included in training for new employees.
- All employees that have a role in the purchasing process should be reminded annually to complete conflict of interest forms if a conflict exists. Any forms with a conflict should be reviewed by the appropriate level of personnel. All completed conflict of interest questionnaire/conflict of interest statement (CIQ/CIS) forms showing a conflict must be posted online.
- Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
- Discourage purchasing involvement in employer-sponsored programs of personal purchases that are not business related.
- Avoid the appearance of unethical or compromising practice in relationships, actions, and communications.
- Refrain from any private business or professional activity that would create a conflict between personal interests and those of your employer.
- Refrain from soliciting or accepting money, loans, credits, discounts, gifts entertainment, favors, or services from present or potential suppliers.
- Do not accept any gift unless allowable by district policy.
- Handle confidential or proprietary information with due care and proper consideration of ethical and legal ramifications and governmental regulations.
- Promote positive supplier relationships through courtesy and impartiality.

## 5.2.1 Laws and Violations

State law relating to violation of purchasing requirements imposes upon violators certain criminal penalties, which are found in the [Texas Education Code \(TEC\), §44.032](#), and the [Texas Local Government Code, §271.029](#).

Numerous problems may be encountered including:

- To get the job done successfully and on time, employees could be tempted to circumvent policies, procedures, and laws, or to make their own liberal “legal” interpretations of existing policies. Though well intentioned, such activity will cause ethical problems.
- Sequential purchasing of the same items or type of items over the course of 12 months may exceed the school district and/or state competitive quotation and procurement requirements. Purchases of like commodities that in normal purchasing practices would be purchased in one purchase MUST be aggregated together over a 12-month period and/or the length of the contract. Although some sequential purchasing is intentional, it usually results from needs that

could not be anticipated. It may also result from lack of centralization and/or centralized control of the purchasing function. Documentation for rationale of sequential purchases should be noted with the purchases.

- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to circumvent bid or proposal laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing. Required replacement components should be noted with the purchase.
- Items are purchased separately. Separate purchases mean purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

## 5.2.2 Common Standards of Ethics

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

- 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.
- 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.
- It is a breach of ethics for any employee 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;
  - a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - 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.
- 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 or subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense.
- It is a breach of ethics 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.
- The prohibition against gratuities and kickbacks prescribed above should be conspicuously set forth in every contract and solicitation therefore.

- It is a breach of ethics for any employee or former employee of a school district knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

The Comptroller has published purchasing guidance, titled the [State of Texas Procurement and Contract Management Guide](#), that includes related ethics information. The [Texas Local Government Code, Chapter 176](#), provides information regarding conflict of interest statements to be filed by vendors and certain school district employees. Refer to the [Texas Ethics Commission](#) for additional information and sample conflict of interest forms.

If a school district board member or other official has a substantial interest in a procurement, that person ~~shall~~ should abstain from discussion and decisions regarding the award of the procurement contract. (See the [Texas Local Government Code, Chapter 171](#), for definition of substantial interest.) In addition, the board member should disclose this substantial interest by filing an affidavit with the district.

### 5.2.3 Vendor Relations

Establishment of certain school district-wide procedures regarding vendor contact is important to an effective purchasing design. Such policies and procedures may include requiring that appointments with vendors be scheduled through the department responsible for purchasing or that a representative of the department responsible for purchasing (e.g., purchasing agent or equivalent) attends all meetings with vendors. An “arm’s-length” approach should be used in all cases unless documented.

In centralized purchasing, the purchasing department usually is responsible for all vendor contact. In this environment, principals, department heads, or staff may communicate with vendors only through the purchasing department. Better control of vendor relations may result.

### 5.2.4 Vendor Gifts

School district officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, directly or indirectly, because it may be construed to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law.

A school district should consult with its attorney and/or other legal counsel at TEA or the Texas Office of the Attorney General (OAG) to develop policies regulating the acceptance of vendor gifts. These policies should conform to applicable statutes and reflect the district’s philosophy regarding regulation of the acceptance of meals, trips, tickets for entertainment, and gifts of any value from existing or prospective vendors.

The [Texas Penal Code, Chapter 36](#), provides information about violations of corrupt influence. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion. A person commits a Class A misdemeanor offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.



Another legal consideration is the disclosure of conflict of interest by board members. If a board member or member of their immediate family has a financial interest in a business entity or entities, they are required to disclose this relationship through the execution of an affidavit. Board members should abstain from voting on award of contracts to businesses in which they or their immediate family members have a financial interest.

The [Texas Local Government Code, Chapter 176](#), provides information regarding conflict of interest statements to be filed by vendors and certain school district employees. Refer to the [Texas Ethics Commission](#) for additional information and sample conflict of interest forms.

School districts should also be aware of the disclosure requirements regarding federal conflict of interest regulations. An employee who is involved in administering, directing, or authorizing federally funded transactions is prohibited from having a financial interest in a vendor associated with federally funded transactions. Members of the employee's immediate family are also prohibited from having such a financial interest.

## 5.2.5 Impermissible Practices

A board member, employee, or agent should not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in the [TEC, §44.031](#). An officer or employee should not knowingly violate the [TEC, §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 mean purchases, made separately, of items that in normal purchasing practices would be made in one purchase. Sequential purchases mean 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~~ results 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. For four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, be employed by or act as an agent for the state or a political subdivision, and receive any compensation through a contract with the state or a political subdivision.

## 5.2.6 The Purchasing Office

Law and policy dictate how all board members, superintendents, and employees of the district must adhere and maintain a limited amount of personal interaction with the vendor community. The purchasing office should establish its own set of guidelines to ensure no vendor wanting to do business with the district is given any special consideration, or even the perception of such, above any other vendors. An arm's length approach must be used at all times with all vendors. Any relationship discovered must be disclosed and/or recused from any decisions related to that vendor regardless of position with the district.

### *FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestion*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- The district should review its local policy to ensure all concerns with ethical standards of behavior for all district employees are addressed.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Annual reviews of ethics related policies are recommended and should be included with any onboarding training for new employees.

## 5.3 Purchasing Policy

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References: [TEC, §44.032](#)

The school district purchasing objective is to purchase the best products, materials, and services at the lowest practical prices within relevant statutes and policies. Procurement policies must accommodate the school district's unique operating environment and needs. Policies should provide governance of the district and should not be focused on the daily operations and processes. This level of management should be handled through guidelines and procedures developed by the district's administration (see [5.5 Purchasing Procedures Manual](#)).

While school district administrators are not authorized to override state law or board policy, they may choose to customize the purchasing function with local, regulation, and exhibit policies to provide for regulatory compliance while minimizing procedures and related costs.

The purchasing function should be the result of a conscientious process design and be reviewed and challenged periodically. The elements should be systematic, comprehensive, and creative. Therefore, structure itself should not be based on historical methods and the way it has always been done. It should begin with a strategic focus and end by linking operations, strategy, technology, and human resources school district-wide. Due to the ability to modify local policies to meet the ever-changing school district environment, procurement policies should be reviewed and updated as necessary.

### 5.3.1 Legal Versus Local

The purchasing office staff should be familiar with the importance of district policy in day-to-day operations. Understanding policy and how to find specific policies is critical to managing a compliant and well-managed procurement process.

Legal policy is a defining context of:

- the United States and Texas Constitutions;
- federal and state statutes, including the TEC;
- Texas OAG opinions;
- TAC, including Commissioner's and State Board of Education (SBOE) rules; and

- other sources of authority defining the legal aspects of a local school district governance and management.

Legal policy is intended as a reference only, and is not modified or adopted by the board.

Local policy governs and guides the operation of the district. Local policy can be changed by the district through board action.

### 5.3.2 Regulation and Exhibit

Regulation and exhibit are not intended to require action of the board of trustees and are not formally adopted as local policy. Rather, regulation and exhibit supplement district manuals and assist in the implementation of local policies. Exhibit can be used to provide forms or documents used by the district.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- All individuals given authority to make purchases for a school district, specifically the individuals assigned the duties as the district's purchasing official(s), should be familiar with their district's purchasing policies. Individuals can review all purchasing-related policies by simply querying their district policies for the words "procurement" and "purchasing" and reviewing the policies where those words appear. This may also include additional training by the purchasing office.

## 5.4 Staff Development and Training

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*References: None.*

An effective, consistent, and meaningful program of professional training for the district's purchasing staff development is essential for the purchasing office to be an effective and efficient partner in the day-to-day operation of any school district. The complexity of the purchasing environment demands that staff members who are responsible for purchasing goods and services periodically receive training in policy, procedures, and the latest developments in Texas school district and federal purchasing requirements.

Training should be ongoing to accommodate:

- employee advancement and staff turnover that create training needs for employees;
- procedures, processes, functions, and support mechanisms that may be modified or enhanced; and
- purchasing changes that may be mandated by legislative, executive, or judicial action.

Many school districts include purchasing training in scheduled in-service classes, academies, webinars, continuing education programs, and departmental meetings. Individuals within the purchasing office responsible for purchasing, such as the buyers and clerks, should receive ongoing instruction about changes in relevant statutes and purchasing practices.

Campus principals and other departmental staff should also receive ongoing training to accommodate changes in staffing. Training should consist of updating staff on recent developments in purchasing, including changes in purchasing statutes and regulations, and changes in the purchasing policies and procedures. Training and staff development may be provided by either internal or external resources. Internal training and staff development may consist of in-house seminars and workshops conducted by purchasing officials. Providing a departmental technical library containing current regulations and procedures helps keep people up to date. Development of internal management and administrative skills for technical staff could be provided through assignment to committees and task forces.

External training may include seminars or workshops conducted by TEA, professional associations, or independent public accounting firms. External training may also consist of formal college course work, memberships in local, state, and/or national purchasing associations, and observation of other purchasing units.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Establish an effective, consistent, and meaningful program of professional training for the district's purchasing staff utilizing internally and externally resources.

## 5.5 Purchasing Procedures Manual

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*References: None*

Every district should have a written manual describing its purchasing policies and procedures.

### 5.5.1 The Structure of the Manual

Overall, a good purchasing manual establishes rules for making school district purchases. It provides guidance to school district employees at the campus and departmental levels in requisitioning purchases. It often is used to acquaint vendors and suppliers with the school district's policies and procedures. Internally, the manual helps train school district personnel in purchasing policy and procedures. Finally, it promotes consistency in purchasing applications throughout the school district.

Such a manual either can stand alone or made a part of a financial and accounting manual. It should be simple, accessible, and relevant.

The purchasing manual should be a living document that reflects current practices and integrates changing rules and regulations as they occur. The school district should update its manual at least every two years to ensure any changes in practice are made and address any legislative or policy changes to purchasing regulations.

Note: Federal guidelines require that a school district must use its own documented procurement procedures, which reflects applicable state and local laws and regulations, provided the procurements conform to applicable federal law.

## 5.5.2 Contents of the Manual

A school district's purchasing manual should address the following items as applicable to its infrastructure:

- standards of conduct, including ethics and conflicts of interest
- purchasing goals and objectives
- relevant statutes, regulations, board policies, guidelines, and requirements
- purchasing authorities within the school district
- guidance on creating a purchase requisition and the processing of a purchase order
- guidance on handling both minor (e.g., low dollar, quotes, spot purchases) and major (e.g., high dollar and/or complex solicitations) procurements
- guidance on contracts
- vendor communications and relations
- receiving requirements
- distribution process (if applicable)
- disposal of obsolete and surplus property
- request for payment vouchers and repair and service of equipment, as applicable

The purchasing manual may also include examples of forms that are helpful to users of the manual. These may include:

- purchase requisitions
- purchase orders
- bid or proposal forms
- request for check vouchers
- receiving reports
- vendor performance evaluations

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- The purchasing office should create a manual designed to assist campus level and department level personnel in the purchasing of supplies and services. The manual should be made available at the most convenient level available through the district's resources such as an intranet or web page.
- The purchasing office should update its manual at least every two years to ensure any changes in practice are made and address any legislative or policy changes to purchasing regulations.
- The school district purchasing authority should consider providing periodic training on all aspects of the purchasing manual because of its relevancy to meeting the school district's needs through procuring products and services. The manual should be reviewed and updated at least every other year to ensure consistency.
- In addition, posting the manual along with other purchasing procedures, guidelines, and contact information on the department's web page should be considered for easy access for end users. Federal guidelines require that a school district documents its own procurement procedures, which reflects applicable state and local laws and regulations, if the procurements conform to applicable federal law. This can be integrated within the other purchasing procedures.

## 5.6 Purchasing Controls and Quality Assurance

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References: [TEC, §44.031\(d\)](#)

A school district should create a strong control environment to perform all purchasing functions. The purchasing manual (see [5.4 Staff Development and Training](#)) is the primary tool for establishing a strong control environment, and it should be strictly adhered to by employees of the district. If a situation occurs that is not addressed in the purchasing manual, it should be referred to the department responsible for purchasing to determine the proper course of action. If this situation reoccurs, it should be considered for inclusion in the purchasing manual.

The central purchasing authority should prepare written procedures designed to detect and prevent the circumvention of purchasing laws and rules. If a comprehensive purchasing manual is provided to guide employees and if monitoring procedures are performed by central purchasing, the result will be a strong control environment and few problems. Ongoing training on purchasing procedures can enhance controls.

### 5.6.1 Purchasing Controls

Expenditure of public money requires a strong control environment. The following items should be present in the purchasing control environment:

- Supervision of purchasing process. Vigilance in the supervision of the entire purchasing function on a daily basis is essential.
- Approval of purchase requisitions at the campus and departmental levels. The campus or department administrator should review for need and approve purchase requisitions before they are submitted to the centralized purchasing department for processing. If available, the budget manager should verify funds are available before any procurement action is taken.
- Approval of purchase orders. The purchasing director or other designated official should review for compliance before approving purchase orders for issuance to vendors. If a purchase is to be federally funded, approval should first be obtained from a special programs administrator.

- Segregation of duties among purchasing and accounting personnel. The purchasing director, finance director, and superintendent are responsible for ensuring that duties among purchasing and accounting personnel are properly segregated (to the degree possible) to provide an environment with checks and balances.
- Maintenance of purchasing files and records. Purchasing clerks should be trained and supervised so that purchasing files and records are complete and maintained in an orderly fashion for the period required by law.
- Control over incoming merchandise. Receiving personnel (either centralized or decentralized) should be trained and monitored to ensure that the proper procedures are followed with incoming merchandise (i.e., the counting and inspection of merchandise received and the completion of receiving reports).
- Verification of invoices with purchase orders and receiving reports. Although receiving personnel are responsible for the initial verification of invoices, accounting personnel verify that the invoice, purchase order, and receiving report match before presenting the invoice for approval for payment.
- Verification of delivery. The requesting campus or department is responsible for ensuring that the order agrees with its original purchase order.
- Internal review of the purchasing process. An internal review of the purchasing process should be performed periodically. This review usually is made by the district's internal audit department and ensures that purchasing policies and procedures are being followed by district personnel.
- Vendor Relations. The district must ensure all potential conflict of interest are identified prior to any purchases involving a district employee and vendor. All vendors should be handled at arm's length so no impression of improprieties exist.

## 5.6.2 Quality Assurance

Quality assurance and quality control should be reflected in all administrative procedures and extend to areas such as analysis of products provided, review of services, and review of vendor performance. Potential areas of quality assurance and quality control for which the purchasing office may have responsibility include the following:

- Administrative Controls
  - ensuring funds are available for a formal solicitation unless otherwise directed by district administrators
  - ensuring the utilization of contracted vendors as applicable when making district purchases
  - ensuring legal compliance with bid, proposal, and quotation requirements
- Product Controls
  - product review and testing, as applicable and available, to ensure items purchased meet the advertised specifications
  - ongoing analysis of product quality and quality of service delivery
  - product reliability analysis
- Vendor Performance
  - review of compliance with contractual terms for prices
  - analysis of timeliness and accuracy of product delivery
  - service availability
  - completeness and accuracy of order

- responsiveness to problems
- quality of products or services received

Whenever problems are encountered with a vendor (i.e., a vendor fails to deliver certain items or delivery does not meet specifications), it is important to document the problem, noting the date and including an accurate description of the problem. The vendor should then be contacted and told specifically how the school district wants the problem corrected. The school district should keep a record of all contact, including the dates and what was discussed. If the problem is not resolved or continues, written notification to the vendor should state the problem, the corrective action required, and that the vendor's failure to correct the problem will be considered a breach of contract and could result in the cancellation of the contract. This record of information about vendor performance is very important in the evaluation of the vendor.

If significant problems are encountered with the vendor, the school district should consult with legal counsel concerning the removal of the vendor from the contracted vendor list and discontinuing any business with the vendor for a legally allowable period of time.

Finally, the school district should try to develop an open and professional relationship with each vendor while still maintaining total independence and objectivity.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- Purchasing controls should be included in the purchasing manual for review and compliance by district employees.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- The school district purchasing authority should review each control listed and develop its own internal controls to ensure a strong and transparent procurement process exists throughout the district. These controls should be included in the renewal of contracts of those with budget authority.

## 5.7 Board Authority

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*References:* TEC, [§44.031\(d\)](#) and [§44.0312](#)

Certain authorities have been given to a school district's board of trustees to govern its district within the extent permissible by state law. Within those same laws, a board may be allowed to delegate certain authorities to the district's superintendent or designees.



## 5.7.1 Disaster Exception

In the event of a catastrophe, emergency, or natural disaster affecting a district, the board of trustees may determine that the delays posed by compliance with the purchasing requirements of the [TEC, §44.031](#), would substantially impair the conduct of classes or other essential school activities, which exempts contracted actions from the purchasing provisions of the [TEC, §44.031](#). This determination requires a formal board action. Pursuant to the [TEC, §44.0312\(b\)](#), “the board may not delegate authority to act regarding an action authorized or required by this subchapter to be taken by the board of trustees of a school district.”

Under local board policy, the board of trustees may delegate authority to the superintendent to authorize contracts in emergency contracts for the replacement, construction, or repair of school equipment or facilities. However, such contracts are still subject to procurement laws unless the board of trustees has made a formal determination to suspend procurement requirements under the [TEC, §44.031\(h\)](#).

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- Delegation authority for general, non-emergency purchases: “The board delegates to the superintendent or designee the authority to determine the method of purchasing in accordance with the law.”
- Delegation authority for emergency purchases: “The board delegates to the superintendent the authority to approve emergency purchases and/or repairs up to a pre-determined amount. The superintendent shall inform the board of any approved emergency purchase and/or repair at the next board meeting for ratification by the board.”

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- If the district’s board allows for delegations of authority as suggested above, the school district should consider establishing procedures to ensure the best interest of the district and its operations are addressed.

## 5.8 Purpose of Competition

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### *References: None*

The role of the purchasing office is crucial to the operations of the district. The involvement of the office should be one of complete support for the classroom and the education of the students entrusted to the district’s care while at the same time ensuring the sourcing expenditures of the district are compliant with law, policy, and procedures while obtaining the best value for the district.

District funding is entrusted to the district by the taxpayers. With the assistance of the purchasing office, the district should effectively monitor and compete expenditures, and spend funds wisely and in best interest of the student and the district.

The purchasing office should not be considered a “yes” or “no” department but one that assists the needs of the district by partnering with end users to secure the best value in all procurements. The purchasing office should play a role in developing a means to meet these needs through competition encouraged by the district’s process and procedures when such environments exist and communicating these to all district staff. To minimize this role by regarding competition as unnecessary or unduly burdensome is relinquishing this responsibility.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no local policy suggestions for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- The purchase office or responsible department should ensure all processes and procedures related to procurements should be effectively communicated to all district staff entrusted with the expenditure of district or special funds.

## 5.9 Commitment of Current Revenue

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*References:* [Texas Local Government Code, §271.903](#)

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:

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

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

##### **Authorized Expenditures**

The adopted budget provides authority to expend funds for the purposes indicated and in accordance with state law, board policy, and the district’s approved purchasing procedures. The expenditure of funds shall be under the direction of the superintendent or designee who shall ensure that funds are expended in accordance with the adopted budget.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- School districts should have clear procedures for ensuring contracts are reviewed for consideration of proper appropriations of funds.
- School districts should have clear procedures for ensuring budget obligations for current and future revenues including the use of non-appropriation clauses for multi-year contracts.

## 5.10 Purchase of Services Below the Competitive Procurement Threshold

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*References: None*

Note: The information provided within the section does not cover purchases that qualify as a single source item as defined by the [TEC, §44.031\(j\)](#), or any professional services identified within the [TEC, §44.031\(f\)](#), or the [Texas Government Code, Chapter 2254](#). Review [5.35 Single or Sole Source](#) and [5.31 Professional Services](#) for guidance in these two areas.

By state law and local policy, a Texas school district is required to attempt to obtain competition for all contracts that meet specific legal thresholds related to aggregation of like purchases over a 12-month period ([TEC, §44.031\(a\)](#)). It is deemed to always be in the best interest of a school district to obtain competition for all purchases no matter the dollar amount. This section does not include any single purchase or contract worth more than the current legal threshold and is intended to address only purchases that fall below the established thresholds.

These types of purchases should be reviewed and authorized only by the purchasing office or assigned administrator prior to commitment by the district, and, if acceptable, be approved and designated as a non-competitive procurement. It is the responsibility of the purchasing office or assigned administrator to document the justification for such purchases. If competition is possible, the procurement must follow the standard purchasing guidelines for competitive purchases, but rarely in the examples provided below will competition be available.

Purchase of certain services made under this process could be defined as the following:

- Governmental entity. An expertise or service that is only available through a governmental entity to which an interlocal agreement does not exist, whether local, state, or federal, where the district must comply with certain legal requirements. If the total amount of the contract with the governmental entity will be valued greater than the current legal threshold annually, the district is advised to secure a formal interlocal agreement. Review [5.17 Interlocal Agreements](#) for more information.
- Student Independent Educational Evaluation (IEE). Based on the Code of Federal Regulations, [34 CFR §300.502](#), a parent of a student has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of [34 CFR §300.502](#). The choice of provider may be determined by the parent and the district should honor the request.

- Professional organization. An employee of the school district pays to obtain a membership into an exclusive professional organization, registration fees related to school business, or fees associated with UIL or other school related competitions. If the total amount of the services provided by a single organization will be valued greater than the current legal threshold annually, the district may consider having administration provide a letter of justification as to why this organization is the district's choice over other organizations, if applicable.
- Assembly, seminar, or workshop. A school or department hosts a uniquely designed or copyrighted assembly, seminar, or workshop that is performed by an individual who does not qualify as an employee of a governmental entity (see above) and is trained in a specific discipline or area of expertise. The school or department must pay a fee to host the event. If the total amount of the event or series of identical events will be valued greater than the current legal threshold annually, the district will be required to follow the [TEC, §44.031](#).
- Conference attendance. An employee of the school district attends a conference, assembly, seminar, workshop, or training session related to school business or job skills in a specific or unique discipline in an area of expertise, and must pay a fee to host or attend. If the total amount of the conference attendance by district staff at a conference or multiple conferences provided by a single organization will be valued greater than the current legal threshold annually, the district may consider having administration provide a letter of justification as to why this organization's conference(s) is the district's choice over other conferences, if applicable.
- Newspaper [A]dvertising. The purchasing of advertising from newspapers of general circulation in the geographic boundaries of the school district for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher.
- Subscriptions. Subscription fees to professional publications needed in the performance of duties or educational requirements.
- Field trips. Field or student trips to specific locales or onetime, limited events.
- Venue—[S]tudent. A facility's location makes it prohibitive to go to another less conducive location based on proximity to the school or facility. (Examples include swim facilities and golf courses.) If the total amount of the venue by students at a specific facility or location will be valued greater than the current legal threshold annually, the district will be required to follow the [TEC, §44.031](#).
- Venue—[E]xtracurricular. Based on availability or schedule, a rental property, facility, or location is chosen when other locations are unavailable or are not conducive to the needs of the school district. (An example would be a facility for graduation ceremonies and the ability to meet the size of venue). If the total amount of the facility or location will be valued greater than the current legal threshold annually, the district may consider having administration provide a letter of justification as to why this facility of location is the district's only choice over another facility or location.
- Travel. When students and/or employees travel outside their district, travel costs, such as airline fares, rental vehicles, lodging, and per diem, that cannot be competitively bid due to locations or dates. Note that travel such as charter buses that can be competitively solicited should not be considered exempt unless the source cannot be secured due to lack of availability.

*FASRG Section Rule*

The school district must establish and document the following processes within either their local policy or procedures:

- A local policy on how non-competitive purchases are to be managed and who has the authority to make such decisions (e.g., superintendent or designee) on what purchases will qualify.

*Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- Establish in local policy how the district will manage procurements that may qualify as non-competitive related to this section. If delegation is to be allowed for justification, this should be identified as “superintendent or designee.”

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- If a district elects to allow for non-competitive purchases as identified within this section, procedures should be established providing guidance on what types of purchases will be included from the list above, from whom will justification be acceptable, and how to manage purchases that will be valued greater than the current legal threshold annually.
- If a district utilizes a governmental entity on a consistent basis for same services, it should consider establishing a formal interlocal with the entity.

## 5.11 Purchases Valued at or above \$50,000

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References: [TEC, §44.031\(a\)](#)

As required by statute and policy, all district contracts for the purchase of goods and services valued at \$50,000 or more in the aggregate for each 12-month period should be made by one of the procurement methods outlined in the [TEC, §44.031](#), that provides the best value for a district. This requirement does not include contracts for the purchase of produce, vehicle fuel, or depository contracts.

The procurement methods identified by statute are:

- competitive bidding for services other than construction services
- competitive sealed proposals for services other than construction services
- a request for proposals for services other than construction services
- an interlocal contract
- a method provided by the [Texas Government Code, Chapter 2269](#), for construction services
- the reverse auction procedure as defined by the [Texas Government Code, §2155.062\(d\)](#)
- the formation of a political subdivision corporation under the [Texas Local Government Code, §304.001](#)

As noted within several of the methods provided above, the district must utilize the [Texas Government Code, Chapter 2269](#), for all construction related procurements. The [Texas Government Code, Chapter](#)

[2269](#), identifies allowable procurement methods available to the district for consideration based on what is the best value for the district.

## 5.11.1 12-Month Aggregation

The term “aggregate,” as used in the [TEC, §44.031\(a\)](#), can be defined as the total sum of demand for desired or “like” goods and services that in normal purchasing practices would be made in one purchase over a 12-month period for all campuses and departments within the school district. The term “aggregate” is not used in any other purchasing-related statutes and is not defined within the chapter. Each district must define “aggregate” within their procedures. The definition should be based on the resources available to the district, such as the ability to track purchases within the district’s finance system, either by vendor (not suggested) or by a pre-determined set of categories or commodity codes (suggested).

The 12-month period can be calendar year or by fiscal year. The district is advised to select the period that best meets its tracking needs.

It is the responsibility of the school district to determine the method or structure of the aggregation process. Because of the [TEC, § 44.031\(a\)](#), requirement, tracking of category spend by the purchasing department is vital. Districts must be consistent in their categories and review prior purchases to ensure categories are not created to circumvent the laws. Note certain requirements for federal funds may vary from this terminology.

### 5.11.1.1 Categories and Commodity Codes

As stated above, categories or commodity codes can assist a district in reporting and understanding aggregated procurement expenditures.

Categories lend themselves to be a descriptor or high-level definition of a type of commodity or service (e.g., office supplies). A category may have many different types of items that would be included in the aggregate. Some finance systems may not have the ability to run reports against the individual descriptions, which may limit the utilization of categories.

On the most basic level, commodity codes use a series of numbers or letters to depict or represent a type of general or unique good or service. The decision to use one or more codes is a district decision and will be based on the annual aggregation and the ability of the finance system.

A school district may choose to create its own list or use other established, recognized commodity codes. These may be shared by other school districts, the district’s finance system vendor, or other entities such as the National Institute of Governmental Purchasing (NIGP). The district should adopt the one that best fits their needs. The following are codes a school district should consider:

- Commercial and Government Entity (CAGE)
- Federal Supply Class Codes (FSC)
- National Institute of Government Purchasing (NIGP)
- North American Industry Classification System (NAICS)
- Product Service Codes (PSC)
- Standard Industrial Classification (SIC)

- United Nations Standard Products and Services Code (UNSPSC)

Commodity codes can be minimal in length (easily adopted but may surpass the legal threshold quickly, less management/oversight) or very detailed in length (more difficult to learn and implement but less chance of exceeding the legal threshold, more management/oversight).

If a school district is or will be considering a change in its finance system, the purchasing office should make a high priority to review how the system will handle and report codes.

### **5.11.1.2 Federal Funds and the Use of Commodity Codes**

For federal micro-purchasing purposes, purchases must be considered in the aggregate over the entire period of applicable federal grants. Therefore, the cost of items purchased using the micro-purchase method is cumulative across the grant year and cannot exceed the current threshold. The aggregate, for federal micro-purchasing purposes, applies to “like types” of purchases, which must be defined by each district in its local policies and procedures. Districts may not define “like types” as a single purchase order or a single vendor, and must be prepared to submit the written policy or rule to TEA monitors and auditors. Commodity codes are the preferred method for tracking spending of federal micro-purchases.

A district should remain diligent in monitoring the requirements for federal funds through the TEA Department of Grant Compliance and Administration.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Select and identify the 12-month period (by calendar or fiscal year) that will be utilized to track and report procurements in aggregate.
- Adopt a list of categories or commodity codes the district will use to track and report procurements in aggregate. One of the more popular commodity codes has been established by the NIGP. While the NIGP may be very detail oriented in its entirety, the code may be modified to meet the needs of the district based on size. A district may request examples of other Texas school districts for comparison.

## **5.12 Best Value Determination for Purchases Valued at or above \$50,000**

References: [TEC, §44.031\(b\)](#)

As stated in the [TEC, §44.031\(b\)](#), in awarding a contract, a district ~~shall~~ must consider:

- purchase price

- the reputation of the vendor and of the vendor's goods or services
- the quality of the vendor's goods or services
- the extent to which the goods or services meet the district's needs
- the vendor's past relationship with the district
- the impact on the ability of the district to comply with laws relating to historically underutilized businesses
- the total long-term cost to the district to acquire the goods or services
- for a contract that is not for goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, if 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
- any other relevant factor specifically listed in the request for bids or proposals

## 5.12.1 The Definition of Best Value

Best value can be better defined as a means to make an award of a procurement other than solely based on price alone. Though price may be considered a high-level concern to the district due to budgetary constraints, other factors may include the reputation of the vendor (e.g., references), the past experience of the vendor in previous contracts with the district, the ability of the vendor to meet the needs of the district, or any other criteria the district may determine to be in its best interest.

To determine which criteria should be considered the most important, weights or points can be assigned to each criterion based on how important it is. Here is an example of how points could be broken down.

Price	60 points
Service time for depot repairs	10 points
Resume of the assigned staff person	10 points
Past experience with the district	10 points
Additional unspecified beneficial options	5 points
References	5 points
<b>Total Points</b>	<b>100 points</b>

Each solicitation is unique so modifications will be made to the criteria used and the points assigned to each. The use of 100 points is a good standard to follow. However, any point structure will work.

### 5.12.1.1 Weighted Pricing

The purchasing office should establish a formula to determine how price points will be assigned. The most objective way to do this is to make the points correlational by dividing the price bid by the lowest price of all responsive bids and multiplying the number by the points assigned. The formula will look something like this:

$(\text{Lowest Responsive Bid} / \text{Vendor's Bid Price}) \times \text{Assigned Points} = \text{Vendor's Points for Price}$



Vendor A's Bid Price	\$1,000.00
Vendor B's Bid Price—Lowest Responsible	\$950.00
Points Assigned to Criterion	60 points
Formula (950.00 / 1000.00) x 60 = <b>57.0</b> points for Vendor A	

## 5.12.2 Requirement of Considering All Criteria

The phrase “shall consider” within the [TEC, §44.031\(b\)](#), creates a requirement in which a contract must be awarded considering all nine items to the extent possible. Each criterion identified in the law must be considered in the evaluation process. As stated in [5.12.1 The Definition of Best Value](#), specific criteria had an establish weight assigned to it based on the importance of the criterion. The example in [5.12.1 The Definition of Best Value](#) shows “Price” to have a weight of 60 points. However, not all items from the [TEC, §44.031\(b\)](#), were included in the list. These items would be considered “zero” points. It is suggested the purchasing office include in a solicitation terms and conditions a statement that all would be considered, though only those with points will be scored.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.13 Competitive Bidding

*References:* [TEC, §44.0351](#); [Texas Local Government Code, Chapter 271](#)

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

A district ~~shall~~ must 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 the [TEC, §44.031\(b\)](#).

Except as provided below, the [Texas Local Government Code, Chapter 271, Subchapter B](#), does not apply to a competitive bidding process under this policy.

### 5.13.1 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 to correct an error in the bid price.

A board ~~[shall have]~~has the right to reject any bid.

### 5.13.2 Safety Record

In determining who is a responsible bidder, a board may consider the safety record of the bidder, the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution, if the following criteria are met:

- The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.
- 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.
- The determinations are not arbitrary and capricious.

### 5.13.3 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]~~must 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]~~is selected. If two or more such bidders are residents of a district, one ~~[shall be]~~is selected by casting lots. In all other cases, one of the identical bids ~~[shall be]~~is selected by casting lots.

A board ~~[shall]~~prescribes the manner of casting lots and ~~[shall]~~must be present when the lots are cast. All qualified bidders or their representatives may be present at casting lots.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.14 Competitive Sealed Proposals

References: [TEC, §44.0352](#)

In selecting a vendor through competitive sealed proposals as authorized by the [TEC, §44.031\(a\)\(2\)](#), a school district should follow the procedures prescribed below.

### 5.14.1 Opening Proposals

The district should receive, publicly open, and read aloud the names of the offerors, and all prices stated in each proposal, if any are required to be stated. The district should evaluate and rank each proposal submitted in relation to the published selection criteria no later than the 45th day after the date on which the proposals are opened.

### 5.14.2 Selection

The district should select the offeror that offers the best value for the district based on the published selection criteria and its ranking evaluation. The district should 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 should end negotiations with that offeror, formally and in writing, and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

### 5.14.3 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.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.15 Request for Proposals (RFP)

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*References:* [TEC, §44.031\(a\)](#)

A request for proposals (RFP) is a part of the competitive sealed proposal process. (RFP can also refer to an alternative purchasing method authorized by the [TEC, 44.031\(a\)](#), and is further explained below.) RFP is the mechanism that generates the receipt of competitive sealed proposals and should contain the following key elements:

- determination by board of trustees that this method will provide the best value for the district
- newspaper advertisement
- notice to proposers
- standard terms and conditions
- special terms and conditions
- scope of work
- scope and intent

- definitions and applicable documents
- requirements
- quality assurance
- acknowledgment form/response sheet
- felony conviction notice
- contract clause

Some differences between RFP as an alternative purchasing method, competitive bidding, and competitive sealed proposals include the following:

- An RFP is not required by law to be sealed. That is, a district may begin negotiating with a proposer upon receipt of the proposal, rather than waiting until the opening time specified in a competitive sealed proposal solicitation.
- An RFP may be used where a district's requirements are less narrowly defined.
- A competitive sealed proposal must be used when awarding a construction contract.
- A competitive procurement limit summary is identical to competitive bidding.
- A newspaper advertisement is identical to competitive bidding.
- A notice to proposers is identical to competitive bidding.
- There must be impartiality and equal access and opportunity to competitive bidding.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.16 Multiple / Catalog / Discount-from-List Contract Awards

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*References:* [TEC, §44.031](#)

Due to the unique needs of a school district and the inability to predict such things as the instructional needs of the classroom, the maintenance requirements in numerous facilities, or professional development, many districts utilize what are called multiple award, catalog, or discount from list type contract awards. (These will be collectively identified as multiple award contracts in this document.) Each type will be defined more thoroughly within this section.

Multiple award contracts are unique in that multiple vendors may be selected for and awarded contracts for a specific bid in which the products or services are alike or essentially similar in nature and specification. These contract awards may be used when the district's aggregated expenditures for a specific area of commodities is near or exceeds the established legal thresholds for competitive procurement, but the commodities cannot be clearly identified to establish a set of specifications.

The district may choose to establish procedures or guidelines stating at a specific dollar threshold the end user must attempt to secure quotes from within the awarded vendors. This helps ensure a more competitive process and may allow the district to garner additional savings versus using only one vendor. The solicitation for the multiple award contract should advise the vendors multiple awards will be made. Districts are discouraged from making an award to every vendor submitting a response to the solicitation because this would not serve to promote competition.

If federal funds are utilized in purchasing from a multiple award contract, the purchasing office should ensure all federal guidelines are met through the solicitation and award processes before allowing the purchase to be made through a multiple award contract. Additional quotes within the awarded vendors within the contract may all that is necessary to accomplish these requirements.

### **5.16.1 Justification for the Establishment of a Multiple Award Contracts**

The establishment of one of these type of contract awards should not be considered the default method for all types of contract awards made by a district. The district should always review the appropriateness of utilizing a multiple award contract. If a single award can meet the needs of the district, multiple award contracts should not be utilized.

A memo created or approved by the lead purchasing officer for the district identifying the need or rationale for multiple awards should be provided. This memo should indicate, at a minimum, that historically, purchases made through such contracts cannot be predicted and/or identified until the need occurs, and the district has an obligation issue a formal procurement due to the legal aggregation requirements.

### **5.16.2 Solicitation Method for Multiple Award Contracts**

The multiple award contracts should be awarded through a RFP per the [TEC, §44.031\(a\)\(3\)](#), due to the flexibility of the method. Proposals should include pricing information, such as unit process and catalog discount, if possible.

### **5.16.3 Best Value Criteria for Multiple Award Contracts**

As required by the [TEC, §44.031\(b\)](#), the district should consider the criteria found in statute. The district should select the offeror(s) that offer the best value for the district based on the published selection criteria and on its ranking evaluation.

### **5.16.4 Periodic, Extension, and/or New Multiple Award Solicitations**

The purchasing office should establish guidelines that require a formal review of multiple award contracts periodically (e.g. semi-annually), at extension periods, or at the time a multiple award contract is about to expire and is to be replaced with a new contract award.

This review should consider the following areas before proceeding:

- The total amount of expenditures for the period. If the expenditure amount is considered excessive, should the contract award be split into more reasonable sections to better manage and monitor for potential competition outside the multiple award contract?
- Does the justification previously used to create the multiple award contract still exist?
- Have circumstances changed since originally bid and now a single award, competitive solicitation may be more appropriate?

Once these and any other pertinent questions are addressed, it is recommended this information be included in the bid file for future considerations and comparisons.

## 5.16.5 Types of Multiple Award Contracts

### **Multiple Award**

Multiple vendors exist, but unique drivers such as expedited receipt or delivery, overburdened competitors that may not be able to meet time requirements, or variances in the goods or services provided may require one vendor over another. Examples include:

- administrative contracted services
- instructional contracted services
- professional development services
- after school/summer classes
- awards and incentive products
- catering services/retail food
- charter bus services
- fundraiser services
- special event services (such as disc jockey [DJ] services, carnival type services, and prom or graduation event services)
- school photography services
- screen print and embroidery services
- software and applications (small purchases only with limited distribution)
- specialty printing services

### **Catalog or Discount-from-list**

Multiple vendors exist but unique drivers exist such as special needs of the students or curriculum or choices of types of items available. The vendor may or may not provide a discount from its established pricing. These types of awards historically have been based on a printed catalog with pricing provided by the vendor and now include websites. This type of contract award may also include “shelf” (in store) pricing. Examples include:

- classroom instructional materials
- fine arts equipment and supplies
- health and first aid equipment and supplies
- vocational equipment and supplies
- retail general merchandise
- maintenance and operations parts not available through an existing district contract

## 5.16.6 Limited Response Period versus Extended Period for Multiple Award Contracts

Normal procurement practices ~~will~~ allow solicitation responses to be submitted to the district within a limited, specific time period, usually two to three weeks. The district may want to review past policies to determine if a limited response time is in the best interest of the district and the needs of its end users. Consideration may need to be given to have an extended opening for receiving responses.

- **Limited Response Period.** This choice is considered a normal, formal RFP. Examples include newspaper advertisements and awards made and limited to only the responders that submitted and awarded for the solicitation.
- **Extended Response Period.** This choice is more informal than a limited response period. The major difference is the date the responses are due. This method allows for responses to be accepted throughout an extended period such as the date of the contract award expiration and awards made periodically. Periodic board approval may also be required.

For newspaper advertisements, the district should consider periodic republication of the advertisement to address concerns about transparency and announcing the solicitation to new readers even though the statutory requirements were met by the initial publication.

Potential responders should be aware of the process the purchasing office will use in making awards. The following is an example of a statement that can be used for this purpose:

“Awards will be made to multiple vendors on an incremental basis during the solicitation offering period. Vendors are encouraged to submit responses as soon as possible. As proposal responses are received or on a periodic basis, they will be opened, evaluated, and either accepted or rejected by the district, based on the criteria outlined within the request for proposal. Awards will be made throughout the open period of this solicitation and will be made upon acceptance of a proposal response. Applicants will then be notified of the district’s decision.”

## 5.16.7 Board Approval of Multiple Award Contracts (as Applicable Based on District Policy)

If local policy requires awards be approved by board action, the purchasing office should plan for how this will occur. It may involve providing a list of suggested awards for the last period as an agenda item. At a minimum, the district administration may want to consider requesting that multiple awards be done by report. The district may want to also consider requesting that the board allow for awards to be immediately effective so purchases can be made by the end user sooner than after a board action.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- The district should always review whether a single award can meet the needs of the district. If so, multiple awards should not be utilized and normal bidding practices should remain in place.
- For each multiple award contract, the purchasing office should periodically review the potential for competition for the commodity. This information should be kept in the bid folder to support any decisions made by the purchasing office.
- The purchasing office should require a memo from the lead purchasing officer identifying the need for the limited or no competition characteristic of multiple award contracts to determine the level of authority needed to decide how to award the contract. This memo should indicate that historically, purchases made through such contracts cannot be predicted and/or identified until the need occurs and the district has an obligation to go to a formal solicitation and award because of legal aggregation requirements.
- The purchasing office should establish guidelines that would periodically require a formal review of multiple award contracts at extension periods or rebid of a multiple award contract. This review should determine the validity and necessity of the multiple award contract.
- The purchasing office should consider periodic republication of the advertisements for any multiple award contracts with extended opening periods.
- For multiple award contracts with extended opening periods, the purchasing office should include a statement on how responses will be managed once received from a potential responder within the solicitation.
- The district administration may want to consider, at minimum, that requesting multiple awards be done by report. The district may want to also consider requesting that the board allow for awards to be immediately effective so purchases can be made by the end user sooner than after a board action.

## 5.17 Interlocal Agreements

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*References: Texas Government Code, §§791.001, 791.011(d–f), ~~and~~ 791.011(j), and 791.025(b–c); Attorney General Opinion JC-0037 (1999)*

To increase efficiency and effectiveness, a district may contract, to the greatest extent possible, with other local governments and state agencies, including the comptroller, to perform some of its purchasing functions.

An interlocal contract must be authorized by a board and the governing body of each contracting party; state the purpose, terms, rights, and duties of the contracting parties; and specify that each party paying for the performance of governmental functions or services ~~shall~~ makes 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.

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, 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. However, such an agreement may not apply to the services provided by firefighters, police officers, or emergency medical personnel.

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

A district may not enter 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:

- the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under the Texas Occupations Code, [Chapter 1001](#) or [Chapter 1051](#); and
- the plans and specifications required under the Texas Occupations Code, [Chapter 1001](#) and [Chapter 1051](#), have been prepared.

The term “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.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.18 State Purchasing Program

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*References:* [Texas Local Government Code, §271.082](#)

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

- the extension of state contract prices to a district when the comptroller considers it feasible;
- the solicitation of bids on items desired by a district if the solicitation is considered feasible by the comptroller and is desired by the district; and
- the 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.

### 5.18.1 District Requirements

*References:* [Texas Local Government Code, §271.083](#)

A district may participate in the purchasing program, including 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. The resolution should state that the board do the following:

- 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.
- Direct the decisions of its representative.
- Be responsible for:
  - submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
  - 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.
- Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.
- Ensure that a purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

The school district should consider adopting official language that defines purchasing method and purchasing authority in local policies, regulations, and/or exhibits.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Designate an official who will act for the district in all matters relating to the state purchasing program.
- Establish guidelines for the use of the state purchasing program.
- Ensure that purchases made through participation in the state purchasing program meet any state requirement to seek competitive bids for the purchase of the item. However, if the purchase is over \$50,000, it is best practice to obtain three quotes from state awarded vendors to maximize competition and best value for the district.
- If competitive bids or proposals would bring a better value to the district, these methods of purchasing should be selected over the use of the state purchasing program.

## 5.19 Multiple Award Contract Schedule—Texas Comptroller's Office

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References: [Texas Government Code, §2155.502](#) and [§2155.504](#)

The comptroller develops 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.

A district may purchase goods or services directly from a vendor under a contract listed on this schedule. A district contracting for the purchase of an automated information system under a contract listed on this schedule ~~[shall]~~must comply with the [Texas Government Code, §2157.068\(e-1\)](#). 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.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.20 Cooperative Purchasing Programs

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*References:* [Texas Local Government Code, §271.102](#); [Attorney General Opinion JC-0037 \(1999\)](#)

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 do the following:

- Designate a person to act on behalf of the district in all matters relating to the program.
- Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
- 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.

### 5.20.1 Best Value When Using a Cooperative

A district should consider establishing guidelines for the use of cooperative entities, especially when the purchase should have a level of competition due to the anticipated cost.

These procedures only apply to procurements of products or services through a cooperative that the district has a current interlocal agreement with and is not available through an existing district contract. Standard quote practices of attempting to receive more than one quote allows for the district to determine if the purchase is in the best value for the district.

Many cooperative contracts are awarded based on an assumption that the governmental entity only is purchasing a quantity of one, there is a limited scope, or there is a discount from a suggested retail price. Most often, the awarded vendor will provide better pricing once they know the actual quantities or

scope. To ensure the district is getting the best value from the vendor, the end user is required to receive a quote(s) from vendor(s) that include:

- the item or service being provided
- the quantity to be ordered if an item
- the price for the item or service
- a reference to the cooperative and awarded contract number

Districts using Child Nutrition Program (CNP) funds to procure services through a cooperative or to pay membership fees to join a cooperative should adhere to the guidance provided by the Texas Department of Agriculture in its [Administrator's Reference Manual \(ARM\)](#).

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

The school district should consider the following language for local policy, regulations and/or exhibits:

- The district will benefit from the anticipated savings generated by greater use of group and cooperative purchasing and streamlined purchasing techniques authorized under the rules. The proposed rules also promote accountability by requiring agencies to maintain discrete records regarding major purchasing decisions.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Districts are not required to participate in a cooperative purchasing program. The rules above apply only in the event a school district chooses to participate in a cooperative purchasing program as defined above. In such case, it is recommended that the district adopt rules and procedures to govern purchases by this method.
- Districts should establish guidelines about when quotes from multiple vendors will be required to ensure the best value for the district.

## 5.21 Contract-Related Fee

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*References:* [TEC, §44.0331](#)

A school district that enters into a purchasing contract valued at \$25,000 or more under the [TEC, §44.031\(a\)\(5\)](#), the [Texas Local Government Code, Chapter 271, Subchapter F](#), or under any other cooperative purchasing program authorized for school districts by law ~~shall~~must 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.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.22 Reverse Auction

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References: [TEC, §44.031\(b\)\(5\)](#); [Texas Local Government Code, §271.906\(b\)](#); [Texas Government Code, §2155.062\(d\)](#)

A district that uses the reverse auction procedure must include a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors.

Reverse auction procedure means one of the following:

- A real-time bidding process that usually lasts less than one hour and takes place at a previously scheduled time and internet location. Multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.
- A bidding process that usually lasts less than two weeks and takes place during a previously scheduled period and at a previously scheduled internet location. Multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.23 Bidder's Principal Place of Business and Preference Laws

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References: [TEC, §44.031\(b-1\)](#); [Texas Local Government Code, §271.0275](#); [Texas Government Code §§2252.001–2252.004](#)

The purchasing office should be familiar with all preference laws. A resident of a district is identified as having a business location within the boundaries of the school district.

The requirements of this section do not apply to a contract involving federal funds. Please refer to the current preference allowances for federal funds.

### 5.23.1 Identical Bids

At times, a purchasing office may receive two or more bids that are identical in all aspects and results. For competitive bids, price is the only factor to consider. For best value bids, the final score and ranking is identical. The following are the potential scenarios the purchasing office must consider in these situations.

- If only one of the bidders submitting an identical bid is a resident of a district, that bidder is to be selected as the awarded bidder.
- If two or more bidders are residents of the district, one is to be selected by the casting of lots.
- In all other cases, one of the identical bids ~~[shall be]~~ is selected by the casting of lots.
- In the casting of lots, the board must determine how the manner of casting lots and must be present when the lots are cast. There are no exclusions of the effected bidders being present when the casting of lots occurs.

The purchasing office should consider further means of identifying the most responsive bidder to remove the tie when identical bids are solicited with best value criteria and/or can be negotiated. This may include a best and final offer process.

### 5.23.2 Bidder's Principle Place of Business

In awarding a contract by competitive sealed bid under the [TEC, §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 the [Texas Local Government Code, §271.9051](#). This subsection does not apply to the purchase of telecommunications services or information services, as those terms are defined by [47 United States Code \(USC\), §153](#).

The requirements of this subsection do not apply to a contract involving federal funds.

### 5.23.3 Reciprocity Preference Laws

Texas law requires a reciprocal preference for bidders of states with preference laws. The comptroller publishes a list of other state bidder preference laws in accordance with the [Texas Government Code, §2252.003](#). To understand how such reciprocation can occur, the purchasing office should review the [State of Texas Procurement and Contract Management Guide](#) published by the Comptroller's Office. For a list of the other states' preferences, go to <https://comptroller.texas.gov/purchasing/bidder-preference/>.

The requirements of this subsection do not apply to a contract involving federal funds.

#### *FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Establish how the school board will do casting lots for tie bids. Ensure the process includes the board being present when the lots are cast.
- Establish procedures for further procedures or guidelines for additional steps in the evaluation process if the solicitation has identified identical bids to remove the tie. This may include a best and final offer process.

## 5.24 Methods for Construction Services

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References: [Texas Government Code, Chapter 2269](#)

The [Texas Government Code, Chapter 2269](#), states that the governing body of a governmental entity that considers a construction contract using a method authorized by the chapter, other than competitive bidding, must determine which method provides the best value for the governmental entity before advertising it. The governmental entity should do the following:

- Base its selection among offerors on applicable criteria listed for the method used.
- Publish, in the RFP or qualifications, the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion document the basis of its selection.
- Make the evaluations public no later than the seventh day after the date the contract is awarded.

Methods for construction services authorized under the [Texas Government Code, Chapter 2269](#), are:

- competitive bidding
- competitive sealed proposals
- construction manager-agent
- construction manager-at-risk
- design-build contracts
- job order contracting
- reverse auction procedure (see the [Texas Government Code, §2155.062\(d\)](#))

### 5.24.1 Competitive Bidding

Competitive bidding is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder. The governmental entity should select or designate an architect or engineer in accordance with the [Texas Occupations Code, Chapter 1051](#) or [Chapter 1001](#), as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

## 5.24.2 Competitive Sealed Proposals

Competitive sealed proposal is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. The governmental entity should select or designate an architect or engineer to prepare construction documents for the project.

## 5.24.3 Construction Manager-Agent

Construction manager-agent method is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors. A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of a facility.

The governmental entity should select or designate an architect or engineer in accordance with the [Texas Occupations Code, Chapter 1051](#) or [Chapter 1001](#), as applicable, to prepare the construction documents required for a project.

## 5.24.4 Construction Manager-At-Risk

The construction manager-at-risk method is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility. On or before the selection of a construction manager-at-risk, the governmental entity should select or designate an architect or engineer to prepare the construction documents for the project.

## 5.24.5 Design-Build Contracts

Design-build is a method of project delivery in which the district contracts with a single entity to take responsibility for both the design and construction of a project. All design, including construction drawings, is done by a single entity, the design-build contractor.

Districts should adopt general criteria to be used to determine which projects will be delivered using the design-build method. In accordance with the [TEC, §44.031\(g\)](#), the district must publish in the request for bids, proposals, or qualifications for construction services the criteria that will be used to evaluate the offerors and relative weights given to the criteria. Additional criteria that may be used to determine when to use design-build include the following:



- time constraints for delivery of the project
- capability and experience of potential teams with the design/build process
- suitability of the project for the use of the design/building process
- capability of the district to manage the project, including personnel to oversee the project who are familiar with the design/build process

Districts should develop formal and documented guidelines and procedures for obtaining qualifications, evaluation, ranking and award of contracts for selecting design-build entities and for managing design-build projects. Formal documented and adopted procedures will allow the public and the design and construction communities to comment on the procedures and will assure that fair, uniform, and effective procedures are followed.

The goal of all procurement methods is to provide the best value to the district. Consequently, design-build should be carefully selected and monitored to ensure that the district receives the highest quality products and services at a fair value.

Note: There are several legal considerations concerning the use of design-build contracts. See the [Texas Attorney General Opinion JC-0037 \(1999\)](#).

## 5.24.6 Job Order Contracting

Job order contracting (JOC) is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, and type and quantities of work required are indefinite.

The district should establish the maximum aggregate contract price when it advertises the proposal, and the board should approve each job, task, or purchase order that exceeds \$500,000. If a specific project utilizing the JOC method is \$500,000 or greater, it must be approved by the district's board.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no policy suggestions for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.25 Construction Versus Maintenance Services

*References:* [TEC, §44.031](#); [Texas Government Code, Chapter 2253](#), [Chapter 2258](#), and [Chapter 2269](#); [Texas Labor Code, Chapter 406](#); [Texas Occupations Code, Chapter 1001](#) and [Chapter 1051](#)

Determining if a contractor is engaged in maintenance operations rather than construction activities must be made on a case-by-case basis, considering all information available at a site. Factors that determine if a project is maintenance or construction include the following:

- one-for-one replacement (“like for like”): replacement parts, components, or equipment should be equal in grade, quality, and capacity to the original, without the addition of any new or upgraded components, appurtenances, features, or functions
- the scale and complexity of the project, including the amount of time and material required to complete the job, should be relatively simple and routine
- the physical size of the object being worked on

If architect or engineering services are required for the services, the work triggers requirements for compliance with updated building codes, or building permits or inspections are required for the work, the services likely constitute construction services rather than maintenance services.

Construction services must be procured using one of the methods set out in the [Texas Government Code, Chapter 2269](#). These services include both traditional construction and contracts to alter or repair a building. Contracts for construction services are subject to laws applicable to public works, including, but not limited to, prevailing wages ([Texas Government Code, Chapter 2258](#)); payment and performance bonds ([Texas Government Code, Chapter 2253](#)); mandatory workers’ compensation coverage for laborers ([Texas Labor Code, §406.096](#)); and requirements related to the use of licensed architects and engineers (e.g., [Texas Occupations Code, §§1001.407, 1001.053, and 1051.703](#)).

Maintenance services may be procured using one of the methods set forth in the [TEC, §44.031\(a\)](#), or through the JOC method set forth in the [Texas Government Code, Chapter 2269](#). Maintenance services are defined as ordinary upkeep or repairs necessary to preserve something in good condition. Maintenance services can also be to “keep up, keep from change; preserve” a building and its components, including “ordinary repairs necessary and proper from time to time for that purpose.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.26 Required and Suggested Contract Provisions

*References:* [TEC, §44.034](#); [Texas Government Code, §808.001\(2\)](#) and [§2271.002](#); [Texas Business and Commerce Code, Chapter 322](#)

Texas law mandates that certain contract provisions be included in some, if not all, vendor contracts. Additional provisions that are in the best interest of the district should be included as well. A district should review all solicitations to ensure that its best interest is covered within all provisions.

Verbal agreements are not binding. If a particular requirement is necessary for the delivery of goods or performance of a service, the district should include the requirements as part of the written agreement. Note that all agreed to provisions are enforceable in a court of law or binding in arbitration as a waiver of immunity. Something as simple as an email between both parties can be binding.

The school district should consult with legal counsel all provisions before they become formal through an executed agreement.

## 5.26.1 Felony Conviction Notice

The [TEC, §44.034\(a\)](#), states that “A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

The [TEC, §44.034\(b\)](#) states that “A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.”

This notice is not required of a publicly held corporation. The vendor is to certify that the information concerning notification of felony convictions has been reviewed and the information furnished is true to the best of their knowledge.

## 5.26.2 Criminal History Certification

A vendor contracting with a district for services is required to obtain criminal history record information relating to certain employees. The vendor must certify to the district that it has received all required criminal history information and relevant employees with disqualifying criminal histories are not serving the district. See [5.37 Background Checks for Criminal History](#) for additional guidance.

## 5.26.3 Boycott Israel

The [Texas Government Code, Chapter 808](#) and [Chapter 2271](#), outlines the prohibition on investment in companies that boycott Israel. In accordance with Texas Government Code, Chapter 2271, a governmental entity cannot enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. The comptroller maintains a list of all companies that boycott Israel. Not later than the thirtieth day after receiving the list, each state governmental entity is responsible for notifying the comptroller of the listed companies in which the state governmental entity owns direct holdings or indirect holdings. Districts must read and gain an understanding of the requirements outlined in the [Texas Government Code, Chapter 808](#) and [Chapter 2271](#), to ensure full compliance.

## 5.26.4 Relationships with Foreign Entities

In accordance with the [Texas Government Code, §§2252.152–2252.154](#), a contractor must certify that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, the government of Iran, the government of Sudan, or a foreign organization designated as a foreign terrorist organization by the U.S. Secretary of State.

In accordance with the [\[Texas Government Code, Chapter 2274\]](#) [Texas Government Code, Chapter 2275](#), a governmental entity cannot enter into a contract or other agreement relating to critical infrastructure

in Texas with a company that is owned or controlled by individuals, any company, or headquartered in China, Iran, North Korea, Russia, or a designated country, even if company is publicly traded.

## 5.26.5 Discrimination Against Firearm and Ammunition Industries

The [Texas Government Code, Chapter 2274](#), outlines the prohibition on contracts with companies that discriminate against firearm and ammunition industries. With certain exclusions and exemptions, the [Texas Government Code, Chapter 2274](#), outlines the prohibition on contracts with companies that discriminate against firearm and ammunition industries.

A governmental entity cannot enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates and will not discriminate against a firearm entity or firearm trade association during the term of the contract. Districts should read and gain an understanding of the requirements outlined in the [Texas Government Code, Chapter 2274](#), to ensure full compliance.

## 5.26.6 Additional Provisions

The following provisions should be considered in all solicitations, if feasible and appropriate. It is recommended the district's legal counsel before any are included in any written documentation, such as solicitations and standard district agreements.

### 5.26.6.1 Indemnification of the Vendor

The Texas Constitution prevents public entities from entering indemnification obligations. Indemnifying a vendor is the promise of public funds to pay future debt that is of an indefinite amount. Promising to cover any harm with school districts funds would create an illegal debt. A district should remove any indemnification language from a contract. If the vendor is unwilling to modify the agreement, the district should insist the phrase "to the extent allowable by State of Texas law" be added.

### 5.26.6.2 Venue

The venue or location where any disputes will be settled should be in the county in which the administration office of the school district is located. Settlements can occur in the form of arbitration or courts. Should a vendor submit their contract with such language, the agreement should be modified to change to the district's location.

### 5.26.6.3 Choice of Law

The solicitation and agreements should show the choice of law to be State of Texas only.

### 5.26.6.4 Availability of Funds

Legally, a district cannot obligate funds beyond current appropriations. All solicitations should include a provision stating the award and subsequent purchases are based only on the current fiscal period, contingent upon the continued availability of appropriations, and subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the school district's board of trustees

or otherwise not made available to the district (e.g., state or federal funding). Any services performed are to be paid. Goods delivered but not paid for should be returned to the vendor if possible.

As a courtesy, the district should provide the vendor with written notice of the failure of the district to make an adequate appropriation to pay the amounts due or the reduction of any appropriation to an amount insufficient to permit the district to pay its obligations.

#### ***5.26.6.5 Time Period of the Contract or Agreement***

A provision should be included in a solicitation and/or agreement establishing the effect from date, either at the time of the award or the commencement date (date in the future), until a specific expiration date. Any purchase issued before the expiration date, even if received after this date, must be honored by the vendor.

If a district wishes to extend a contract after the expiration date, the original solicitation and award should include the requirements for such extensions. It is a best practice that all extensions should be issued in writing prior to the end of the current contract term. Note that contracts that have expired cannot be re-established as active.

An extension provision should include the type of extension option. A sole option extension means that the choice to extend the contract is based solely on the determination by the district. The vendor must be required to honor the extension under the original terms and conditions. An option of both parties allows the decision to extend to be an agreement of both the district and the vendor. If either party rejects the extension option, the contract will be terminated at the end of the current contract period.

There may be times when a contract needs to be extended only for a short period to allow a district to consider alternative directions that will not include the current contract. A district should include wording in the solicitation that allows for a specific limit of additional time if required to avoid a contract lapse. This should be done only as a sole option of a district. A maximum period of 90 days is considered optimum. Again, this should be based on the current contract pricing and terms and conditions, and be done in writing prior to the end of the current contract term.

#### ***5.26.6.6 Other Points to Consider***

There are many variations and terms that could be included within a solicitation and/or contract agreement. Below are others to consider. The district should consult with their legal counsel before these provisions are included. These variations and terms include:

- cancellation for cause of convenience
- contract changes or modifications
- confidentiality
- payment terms
- dispute resolution
- insurance
- damages
- method of contacting both parties

#### ***FASRG Section Rule***

There are no rules for this section.

*Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

A school district should consider creating procedures based on the following best practice:

- Review provisions that should be included in solicitations and/or agreements with legal counsel.

## 5.27 Disclosure of Interested Parties

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References: [Texas Government Code, §2252.908, §2252.908\(c\)\(4–6\)](#); [1 TAC §46.1\(c\)](#)

A district may not enter into a contract that requires an action or vote of the board before the contract may be signed, or has a value of at least one million dollars, with a business entity unless the business entity submits a disclosure of interested parties to the district at the time that the signed contract is submitted to the district.

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.

### 5.27.1 Exclusions

The disclosure requirement does not apply to a contract with:

- a publicly traded business entity, including a wholly owned subsidiary of the entity;
- an electric utility, as defined by the [Texas Utilities Code, §31.002](#); or
- a gas utility, as defined by the [Texas Utilities Code, §121.001](#).

### 5.27.2 Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission. This form includes a list of the interested parties for the contract of which the contracting business entity is aware. It also includes 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 the [Texas Government Code, §2252.908\(e\)\(2\)](#).

The certification of filing and the completed disclosure of interested parties form generated by the Texas Ethics Commission'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.

Before a school district can enter into a contract with an entity that will require board approval or has a value of at least one million dollars, the vendor must visit the [Texas Ethics Commission website](#) to properly fill out [the Form 1295 Certificate of Interested Parties Electronic Filing Application](#). Once completed, this form will be given a unique certification number called a "certification of filing." This form will need to be printed, signed, and provided to the district before moving forward with a contract.

Once a contract is finalized, a district has 30 days to acknowledge receipt of the Form 1295 on the [Texas Ethics Commission website](#). The district should keep a copy of the acknowledged form and file it with the contract.

### 5.27.3 Deadline

A district that receives a completed disclosure of interested parties form and certification of filing ~~shall~~must notify the [Texas Ethics Commission](#), in an electronic format prescribed by the [Texas Ethics Commission](#), of the receipt of those documents no later than the 30th day after the date the board receives the disclosure.

### 5.27.4 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:

- 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 one million dollars; or
- the business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract and there is a change to the disclosure, the changed contract requires an action or vote by the board, or the value of the changed contract is at least one million dollars greater than the value of the existing contract.

### 5.27.5 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.

“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. The term does not include a governmental entity or state agency.

“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.

“Controlling interest” means:

- an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
- 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 10 members; or

- 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.)

“Signed” includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

“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.

For additional conflict of interest disclosures, review your local policy.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.28 Contract with Person Indebted to District

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References: [TEC, §44.044](#)

A board may establish regulations permitting a school district to refuse to enter into a contract or other transaction with a person or company indebted or owing money, such as delinquent taxes, 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.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Establish guidelines on how the purchasing office is to ensure no company or individual indebted to the district is awarded a contract.



## 5.29 Notice Publication (Newspaper Advertisements)

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References: [TEC, §44.031\(g\)](#); [Texas Government Code, §2051.042](#)

Texas school districts are required to place advertisements for any formal solicitation in local newspapers. The advertisement must adhere to the following requirements:

- It must be published in the county where a district's central administrative office is located. If there is no newspaper in that county, the advertising ~~shall~~ **must** 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.
- Notice of when (date and time) and where (the physical location) the solicitation will be received and opened must be included. It is recommended that the purchasing office establish certain days of the week bids will be opened unless there is a need for an exception to these days. The location should be at the purchasing office. If it cannot be held in the purchasing office, it must be on district property. Note that if the district is publishing a two-step procurement process, the time and place where the responses will be received is not required to be published separately.
- It must be published once a week for at least two weeks prior to the deadline for receiving responses.

### 5.29.1 Definition of a Newspaper

Under the [Texas Government Code, §2051.044](#), the following are requirements for a newspaper to be utilized for advertisements of solicitations per the [TEC, §44.031\(g\)](#). The newspaper must:

- be in general circulation in the district;
- devote no less than 25 percent of its total column lineage to general interest items (e.g., news stories, local news, etc.);
- be published at least once each week;
- be entered as second-class postal matter in the county where published; and
- have been published regularly and continuously for at least 12 months before the district publishes an advertisement. (A weekly newspaper that has been published regularly and continuously is acceptable under subsection (a) if the newspaper omits no more than two issues in the 12-month period.)

Note that this section does not apply to school districts in counties who border the Red River. See the [Texas Government Code, §2051.0441](#), for related requirements.

### 5.29.2 Timing of the Advertisement

Under the [Texas Local Government Code, §271.025](#), a school district must mail (publish) the solicitation related to public works projects (construction) before the advertisement is made available. This should be considered a best practice for all solicitations.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Use less expensive newspapers that publish legal advertisements when practical.
- Run the advertisements on weekdays to reduce costs.
- Provide only the required content in the advertisements to reduce cost.
- Document the proof of advertisement in the bid file.
- To ensure compliance with the best practice of a two-week period, the purchasing office should not open any bids prior to two full weeks or 14 days after the first advertisement date.

## 5.30 Electronic Bids or Proposals

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References: [TEC, §44.0313](#); [Texas Local Government Code, §271.0065](#)

Many purchasing offices utilize or are considering the implementation of a type of electronic bidding system. The purchasing office should ensure that the system is properly implemented and legal requirements are met before any solicitations are published and responses are received.

### 5.30.1 Procedures for Receipt of Electronic Bid or Proposal Responses

If such a procedure exists, a district's board of trustees must adopt rules to ensure security and confidentiality. These rules should also ensure that the electronic bids or proposals remain effectively unopened until the time identified within the solicitation. These procedures should be adopted in the district's local policy. A school district should request examples from other districts who have adopted the rules and modify to them to for its purpose. An example is provided at the end of this section.

### 5.30.2 Sealing of Electronic Responses

By law, an electronic solicitation is not required to be physically sealed as with those submitted in person or delivered by common carrier (e.g., USPS, UPS, and FedEx). In accordance with the [\[Texas Local Government Code, §271.005\]](#) [Texas Local Government Code, §271.0065](#), a governmental agency can receive bids or proposals in hard-copy format or through electronic transmission.

### 5.30.3 Electronic Vendors List

To obtain bids or proposals on supplies, materials, equipment, and services, an electronic vendors list should be maintained by the purchasing office. This list must be open to all interested bidders. Vendors who fail to deliver or to comply with any of the terms, specifications, or contract requirements of an awarded contract should be barred from the vendors list for a period time not to exceed two years. This

period should be from the time the infraction occurred and the vendor was notified in writing of removal from the list.

## 5.30.4 Responses to Electronic Solicitations

Under the [Texas Local Government Code, §271.0065](#), a vendor must be given the opportunity to respond to an electronic solicitation in the form of a hard copy (paper). The purchasing office may want to consider offering a vendor accessible computer to allow vendors without internet access or computers to respond through the district's electronic bidding system.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Allow for the receipt of paper proposal packages so that no vendors are eliminated from your bidding process.
- Districts may want to create a vendor computer station within the purchasing department to allow vendors without internet access or computers to respond online.
- The following is an example of the wording that could be adopted to meet the requirements of the [TEC, §44.0313](#).
  - District users and vendors are required to access the system through a unique user account and password.
  - Individual user passwords will be stored in a manner that cannot be accessed by any other user, and the district system administrator will only be able to reset the password through a system-generated program based on a user request to reset a password.
  - All data transmitted between the district and vendors will be encrypted using standard security technology.
  - The system will limit inactivity by expiring a session based on a preset time period.
  - All actions within the system can be audited for actions taken by any user.
  - All formal sealed solicitations will be electronically sealed in an electronic lockbox and not accessible to any user other than the initiating vendor.
  - The solicitation document includes, at a minimum, the date and time the bid was received by the system.
  - The system will not allow for any late bids after the closing date and time.
  - The system will only allow for bids to be electronically unsealed by authorized district staff.
  - The system will retain electronic copies of the vendors' responses for the minimum time period required by the State of Texas records retention schedule or for an extended period time if required by the district.

## 5.31 Professional Services

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References: [TEC, §44.031\(f\)](#); [Texas Government Code, §791.011\(h\)](#), [Chapter 2254](#), and [Chapter 2269](#)

Though no formal definition of “professional services” exists in any of the statutes, the [TEC, §44.031](#), and the [Texas Government Code, Chapter 2254](#) and [Chapter 2269](#), identify specific professions that are fall under this term.

The following are the individual professions identified within the specific statute.

- [TEC, §44.031\(f\)](#)
  - certified public accounting
  - fiscal agent
  - financial consultant
  - attorney
  - technology consultant
- [Texas Government Code, §2254.002\(2\)\(B\)](#)
  - licensed real estate appraising
  - nursing
  - medicine
  - optometry
  - landscape architecture
  - architect
  - engineer
  - land surveyor
- [Texas Government Code, §2269.057](#) and [§2269.058](#)
  - architect
  - engineer
  - construction material engineering, testing and inspection services

### 5.31.1 Request for Qualifications

The standard practice for soliciting professional services is a request for qualifications. The referenced statutes define the process and offer very few exceptions.

- Professional services are not to be solicited on a competitive basis.
- The highest ranked firm is to be identified on a basis of demonstrated competence and qualifications.
- The highest ranked firm must provide the service at a fair and reasonable price.
- For architects, engineers, and land surveyors, there should be an attempt to negotiate with the most qualified firm until a satisfactory contract can be executed. If a satisfactory contract cannot be negotiated with the most highly qualified firm, the district is to formally end negotiations with that firm and then negotiate with the firm next in line until either a contract is executed or the district chooses not to award.

## 5.31.2 Cooperative Contracts Not Allowed for Architects or Engineers

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services.

## 5.31.3 Use of Federal Funds for Professional Services

The district should research the requirements of the use of federal funds and professional services before any funds are identified and/or expended.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Advertise and receive sealed qualifications packages for professional services whenever practical.
- Evaluate and rank the respondents based on their demonstrated competence.
- Document in writing the “fair and reasonable price” as determined by budget, comparisons to other districts/agencies, prices previously established with same/similar professionals, historical prices, and/or established market rates.

## 5.32 Emergency Damage or Destruction

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*References:* [TEC, §44.031\(h\)](#)

The [TEC, §44.031\(h\)](#), allows for the board of trustees to declare an emergency to make purchases through other methods than those found in the [TEC, §44.031](#), if the delay would prevent or substantially impair the conduct of classes or other essential school activities. These purchases include equipment, repairing a school facility, or replacing personal property that has been destroyed or severely damaged because of an unforeseen (e.g., tornado) or foreseen (e.g., hurricane) catastrophe or emergency.

### 5.32.1 Types of Emergencies

Two types of emergency purchases are made in districts.

One type results from an unforeseen catastrophe or emergency that threatens the health, safety, or welfare of students, or damages school equipment or facilities. Purchases for the repair or replacement of damaged equipment or facilities 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. Emergency purchases exceeding the dollar amount triggering competitive procurement requirements should be

competitively procured, unless the board of trustees has exempted procurement in conformance with the [TEC, §44.031\(h\)](#).

The second type of emergency purchase usually is defined by the [TEC, §44.0312\(c\)](#), and authorized under local policy to authorize the superintendent to contract for the emergency replacement, construction, or repair of equipment or facilities, if necessary for the health and safety of district students and staff. Emergency purchases of this type may or may not fall below the dollar amount triggering competitive procurement requirements. If over the threshold for competitive procurement under the [TEC, §44.031\(a\)](#), the contract must either be competitively procured or performed by a pre-awarded vendor, including through a purchasing cooperative, unless the school board has made a determination to suspend procurement rules under the [TEC, §44.031\(h\)](#). 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.

These types of emergency purchase may have to be utilized after regular business hours or on weekends and holidays. After purchases of this type are made, a detailed invoice and contract should be created prior to the work being performed, and purchase orders should be issued on the next business day. Emergency purchases should result from a true emergency, rather than from improper planning.

It is important for districts to differentiate between emergency purchases and non-emergency purchases, and to require that all emergency purchases be fully justified.

## 5.32.2 Delegation of Authority

See [5.7 Board Authority](#) for more information.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

See [5.7 Board Authority](#) for local policy suggestions.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Whenever practical, establishing a contract with a disaster mitigation firm or firms in advance of a disaster allows the district the ability to immediately contact and deploy the resources of the contracted firm. This can help to limit property damages and prevent the district from trying to negotiate a contract under duress. A district should establish unit price contract(s) based on unit prices instead of time and materials to allow for auditing of costs.
- A district must be aware that FEMA reimbursement requirements for emergency services are stricter and only relate to those services required to repair damaged areas, not to replace damaged areas.

## 5.33 Computers and Software

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References: [TEC, §44.031\(i\)](#); [Texas Government Code, Chapter 2054](#) and [Chapter 2157](#)

Based on the [TEC, §44.031](#), school districts have multiple methods to procure technology equipment, services, and software. A district can always choose to use a formal solicitation method such as a RFP ([TEC, §44.031\(a\)\(3\)](#)) or utilize a cooperative interlocal contract ([TEC, §44.031\(a\)\(4\)](#)). The [TEC, §44.031\(i\)](#), also allows a school district to purchase technology equipment, services, and software through contracts awarded by the Department of Information Resources (DIR). DIR has extensively negotiated contracts for the State of Texas and its governmental entities. These contracts can be found at <https://dir.texas.gov>. All methods mentioned above meet a school district's competitive bidding requirements.

### 5.33.1 Technology Department's Involvement in the Purchase of Technology

District technology staff should provide some degree of input regarding technology purchases, including software. Standards established by technology staff can ensure computer-related purchases will work within the district's technology infrastructure.

### 5.33.2 Purchases of Software and Applications

The purchase of pre-developed software, including apps, should not be handled any differently than any other procurement made with the district. Software is considered a commodity, not a service. However, the development of a software application, in which the district awards the creation of a specific program, is considered a service.

A district may purchase an automated information system using the purchasing method described by the [Texas 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.

When purchasing software, the district, with assistance from its technology department, should review the type of data to be included within the software program. If the program asks for or requires such data as student or employee information, certain provisions should be put in place by the district to ensure such data is not compromised.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Review the resources available through the DIR for state contracts for computer equipment, technology services, and software before considering formal solicitations.
- District technology staff should provide some degree of input regarding technology purchases, including software.
- Software purchases should be reviewed to identify any district data that may be shared and identify sufficient data protection provisions.

## 5.34 Automated External Defibrillators (AEDs)

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References: [TEC, §44.047](#); [Texas Health and Safety Code, §779.001](#)

A school that purchases or leases an automated external defibrillator (AED) is required to ensure that the AED meets the standards established by the U.S. Food and Drug Administration (FDA). The term AED is defined by the [Texas Health and Safety Code, §779.001](#), which states an AED, as a heart monitor and defibrillator:

- has received approval from the FDA of its premarket notification filed under [21 USC, §360\(k\)](#), as amended;
- can recognize the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and can determine, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and
- can determine that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

A school district should work directly with the local first responders, such as fire departments and emergency medical technicians, to determine which devices are recognized and they are familiar with before a purchase is made. AEDs can be purchased through cooperative interlocal contracts.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Work directly with the local emergency responders to determine which devices they are most familiar with and recommend.

## 5.35 Single or Sole Source

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References: [TEC, §44.031\(j-k\)](#)

A school district may choose to not follow the requirements of the [TEC, §44.031](#), if it is determined by the district an item to be purchased will exceed \$50,000 as defined in the [TEC, §44.031](#), and is available from only one source, including:



- an item for which competition is precluded because of a patent, copyright, secret process, or monopoly
- a film, manuscript, or book
- a utility service, including electricity, gas, or water
- a captive replacement part or component for equipment

This statute does not include services.

To be a bona fide sole source exemption to purchasing law requirements, there must be no other like items available for purchase that would serve the same purpose or function, and only one price for the product because of exclusive distribution or marketing rights. The fact that an item is covered by a patent or copyright is but only one factor in determining if the purchase falls under the sole source exemption to the purchase requirements. For example, copyrighted software not available off-the-shelf from retailers or only available from a single source, such as a sole distributor or the producer, is not subject to the TEC purchasing law.

The sole source exception is mainframe data processing equipment and peripheral attachments with a single item purchase price of more than \$15,000.

### 5.35.1 Reviewing and Processing of Single Source Claims

It is important a purchasing office develop guidelines to be followed with all single source purchases. Such guidelines will allow for consistency in the process of approving or disallowing a claim. Such guidelines should outline what the purchasing office will do at a minimum, such as an internet search, and other means are available to ensure the claim is valid.

Other potential means to research competition is to utilize programs available such as searching for additional vendors through the Centralized Master Bidders List (<https://comptroller.texas.gov/purchasing/vendor/cmb/>) or posting a request for competition through the *Electronic State Business Daily* (<http://www.txsmartbuy.com/sp>), both managed by the Texas Comptroller's office.

### 5.35.2 Single Source Claims by Vendors

Some vendors claim their product is the only item available to perform the functions desired by the district. All claims by vendors should be reviewed and researched before they are accepted. This may include researching the features of the item through the internet or requesting information from other districts that may use and have procured similar items.

### 5.35.3 Single Source and Federal Funds

For federal purchases, [2 Code of Federal Regulations \(CFR\), Part 200](#) states the district should research the requirements of the use of federal funds and single source purchases before any funds are identified and/or expended.

#### *FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Consider following the purchasing methods available through the [TEC, §44.031](#), to ensure that no competition exists for a product before making a purchase based on a single source claim.
- Use of sole source method may require a newspaper advertisement referencing a request for information to show the district followed sufficient due diligence to verify a vendor's sole source claims.
- Services are not considered sole source.

## 5.36 Insurance

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*References:* [TEC, §44.031](#); [Attorney General Opinions DM-347 \(1995\)](#); [Attorney General Opinion DM-418 \(1996\)](#)

Insurance comes in many forms, including general liability, student insurance, and health benefits. The establishment of insurance contracts should be made accordance with the [TEC, §44.031](#), as applicable.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.37 Background Checks for Criminal History

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*References:* [TEC, §22.0834](#); [1 TAC §46.3](#) and [§46.4](#)

Texas law and district policies are concerned with the relationship of a school district with individuals and contractors. These laws and policies ensure that the individuals or employees of contractors performing services for the district can be allowed to have access to the district as a whole and students are kept safe. These requirements are in place to eliminate the chance that the district unknowingly falls victim to the illegal practices of a former convicted criminal and protect students from potential predators.

### 5.37.1 Background Checks—Definitions

To better understand the terms used in statute and policy related to background checks, review [19 TAC §153.1101](#), focusing on the terms:

- criminal history clearinghouse
- continuing duties
- covered contract employee
- direct contact with students
- date of securing services
- national criminal history record information
- service contractor

Note this subsection covers district staff, both certified and non-certified, in addition to contractors. Be aware that not all terms included in the statute, policies, or rules are applicable.

## 5.37.2 Contractor Employee Eligibility

This section of the TEC was created to establish certain guidelines on how school districts ensure that the individuals who are hired by contract by the district do not have criminal history that could be detrimental to the students or administration of the district's business. Individuals who have been convicted or received deferred adjudication for a Title 5 felony offense or a sex offense when the victim of the crime was a child would be prohibited from employment with a public school district.

A clearinghouse managed by the Texas Department of Public Safety provides information on individuals to increase efficiency and reduce the costs associated with background checks.

When contracts are extended, the purchasing office should require the contractor to recertify in writing that they have and will continue to check its staff assigned to the district in the clearinghouse to ensure the eligibility of its staff to participate in the services provided to the district.

## 5.37.3 National Criminal History Check

The [TEC, §22.0834\(a–b\)](#), addresses an individual who is employed by a contractor who does business with a school district. If the employee was hired in 2008 or later, will have continuing duties under the contract, and will have direct contact with students, the person must go through a national criminal history check before he or she can work on the contract.

## 5.37.4 Contractor Requirements to Secure Criminal History Information on Employees

The [TEC, §22.0834\(c–e\)](#), requires that a company that will be performing a contract with a school district must send the required information for obtaining national criminal history record information to the Texas Department of Public Safety. This information may include fingerprints and photographs.

The company must certify to the district that it has met this requirement and received all criminal history record information. Certification can be done through the solicitation process and during the term of the contract in agreed upon time periods. This requirement also covers the responsibility of the contractor to ensure subcontractors have completed background checks.

The [TEC, §22.0834\(g–j\)](#), requires that an entity that contracts with a district obtain and certify that it has received all criminal history record information for any employees that will have continuing duties under the contract and be in direct contact with students.

The [TEC, §22.0834\(j\)](#), states that TEA may adopt rules related to this section.

Note: Though not required, if a school district chooses to develop and maintain ownership of the background checks process to include the handling of the background checks through the national database, the district should develop procedures to ensure any documentation received is kept confidential.

## 5.37.5 Fingerprinting of Contract Employees

The [TEC, §22.0834](#), requires the following:

- A contractor (entity or individual) that provides services to a school district/charter school, and has direct contact with students, must be fingerprinted before beginning work.
- The contractor should certify to the school district/charter school that it is in compliance with the fingerprinting laws. The school district/charter school may review the background check results for contracted employees in the DPS FACT Clearinghouse as provided by the [Texas Government Code, §411.0845](#).
- Additionally, a subcontractor must certify to the school district/charter school and to the contracting entity that the subcontractor has fingerprinted all individuals providing services to the district under the terms of the contract.
- The school district/charter school may request additional information from a contractor to verify that the fingerprinting has been completed.

~~[Instructions for the contractors are provided through the [Texas Department of Public Safety](#).]~~ Further information about this topic can be found on the [TEA Requirements for School District Contractors webpage](#).

## 5.37.6 Emergencies

The [TEC, §22.0834\(f\)](#), allows for a district to declare an emergency and may give permission to an individual to perform contracted services if he or she is accompanied by a district employee. Note that no definition is given in this section, so the [TEC, §44.031\(h\)](#), might be considered the basis. The subsection also provides the ability for a district to adopt related rules and policies.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- The purchasing office should create a provision to be included with a solicitation that requires the respondent to affirm that they understand their legal requirements related to background checks and have secured information on each employee assigned to the district. This

requirement also covers the responsibility of the contractor to ensure subcontractors have completed background checks.

- The purchasing office should establish a procedure that requires the contractor to recertify in writing it has and will continue to test its staff assigned to the district against the clearinghouse to ensure the eligibility of its staff to provide services to the district.
- If a school district chooses to develop and maintain ownership of the background check process, it should develop procedures to ensure any related documentation is kept confidential due to nature of the data in the reports.

## 5.38 Felony Conviction Notice

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*References:* [TEC, §44.034](#)

An individual or business must give advance notice if an individual, owner, or operator of a company who wants to do business with a district has committed a felony. This does not disqualify the company from consideration, but if the conviction is not provided in advance, the district may terminate the contract and compensate the individual or company for work completed up until cancelation. Publicly held corporations are except from this notice.

A form was created around the time the initial law was passed and is an acceptable means for having the contractor certify their qualifications. A district purchasing office may choose to formulate an acceptable alternative if another type of form is necessary or more efficient. Both are acceptable to meet the statute and policy requirements.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- A district may choose to use the felony conviction form that was created at the beginning of the requirement or formulate an acceptable alternative if another type of form is necessary or more efficient. Both are acceptable for meeting the statute and policy requirements.

## 5.39 Change Orders

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*References:* [TEC, §44.0411](#)

If a change in plans or specifications is necessary after a contract has begun or if it is necessary to decrease or increase the quantity of work to be performed or of the 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 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 one million dollars 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 one million dollars increases the contract amount to one million dollars 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.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.40 Energy or Water Conservation Measures

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*References:* [TEC, §44.901](#) and [§44.902](#); [Texas Government Code, Chapter 2254](#)

A district may contract for energy or water conservation measures. Such a contract should be let according to the procedures established for professional services by the [Texas Government Code, §2254.004](#).

A board should establish a long-range energy plan to reduce a district's annual electric consumption by five percent and then consume electricity in accordance with the district's energy plan.

The school district must establish and document the following processes within its local policy or procedures:

- The board may enter into energy savings performance contracts only with providers who are experienced in the design implementation and installation of the energy or water conservation measures addressed by the contract.
- The board should require the provider to file a payment and performance bond. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.41 Recycled Products

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References: [Texas Health and Safety Code, §361.426](#)

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

- eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
- encourage the use of products made of recycled materials; and
- ensure to the maximum extent economically feasible that the district purchase products that may be recycled when they have served their intended use.

A district may seek an exemption from compliance if:

- it has a population of less than 5,000 within its geographic boundaries and/or
- it has a student enrollment of less than 10,000
- and it demonstrates to the Water Commission that compliance would create a hardship on the district.

Districts must also adhere to the applicable requirements outlined in [30 TAC Chapter 328](#).

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no policy suggestions for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.42 Agricultural Products

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References: [TEC, §44.042](#)

If the cost and quality are equal, a district ~~[shall]~~must 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]~~must 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.

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

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.43 Federal Requirements

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*References:* [2 CFR, Part 200](#)

The U.S. Department of Education (DOE) adopts the Office of Management and Budget (OMB) Guidance in [2 CFR, Part 200](#), except for [2 CFR §200.102\(a\)](#), and [2 CFR, §200.207\(a\)](#). This guidance establishes uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, including school districts. Because of this change, the Education Department General Administrative Regulations (EDGAR) consists of multiple parts and regulations. For a complete description of the federal regulations that apply to federal education grant awards, visit [the EDGAR website](#).

~~[TEA is the lead agency for EDGAR, and as the grantee, has compiled information and provided guidance on the procurement requirements of EDGAR for the local educational agencies (LEAs). To assist in guiding LEAs through these requirements, TEA has developed a list of frequently asked questions (FAQ) that is available on TEA's EDGAR website at <https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>.]~~ To assist in guiding LEAs through EDGAR requirements, TEA has compiled information that is available on the [TEA EDGAR webpage](#).

The requirements for EDGAR are changed periodically. LEAs are highly encouraged to participate in training to fully understand the procurement requirements of EDGAR.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.



## 5.44 Bus Purchase or Right to Use Lease

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References: [TEC, §44.031\(l\)](#); [Texas Transportation Code, Chapter 547](#)

Each contract proposed for the purchase, financed purchase, or right to use lease of one or more school buses, including a lease with an option to purchase, ~~shall~~ **must** be submitted to competitive bidding when the contract is valued at \$20,000 or more. It is advised the district review their policies for the purchase, financed purchase, or right to use lease of district vehicles.

The [Texas Transportation Code, Chapter 547](#), requires all school buses manufactured after 2017 to be equipped with seat belts. School district boards may elect by resolution to forego this if fiscally unable.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no policy suggestions for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.45 Right to Work

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References: [TEC, §44.043](#)

While the school district is engaged in procuring goods and services or awarding a contract or overseeing a procurement or construction for a public work or public improvement, a district:

- may not consider whether a vendor is a member of or has another relationship with any organization; and
- should 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.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no policy suggestions for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.46 Lobbying Restriction: Tobacco Education Grant Funds

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References: [Texas Government Code, §403.1067](#); [31 USC, §1352](#); [34 CFR, Part 82 \(New Restrictions on Lobbying\)](#)

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

- lobbying expenses incurred by the district;
- a person or entity that is required under the [Texas Government Code, Chapter 305](#), to register as a lobbyist with the Texas Ethics Commission;
- any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in bullet point 2); or
- 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.

### 5.46.1 Byrd Anti-Lobbying Amendment

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by [31 USC, §1352](#).

Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

### 5.46.2 Certification Regarding Lobbying

Applicable to grants, subgrants, cooperative agreements, and contracts exceeding \$100,000 in federal funds. The undersigned must submit a certification regarding lobbying as a prerequisite for making or entering a transaction that states the following:

1. No federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and

submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.47 Protest Procedures and Dispute Resolutions

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*References: None*

If the procurement process of a school district follows law, policy, and best practices, protests and disputes will be minimized and/or non-existent.

### 5.47.1 Protests

A protest is when a vendor may believe it has been aggrieved by the outcome of an award. A protest policy and/or procedure will allow it to follow a formal process for such a grievance, and it should be given the right to do so.

A school district should never discourage a vendor from protesting an award outcome. If the vendor believes it was aggrieved, it should file the protest. If the school district followed all legal and local requirements and had a solid procurement process in place, the protest will be identified as not being valid. This will allow the school district to show it has a strong process in place for their procurements. To allow for this to happen, a school district should have, at minimum, a procedure level process to provide guidance to both the vendor and the district on how to proceed. The following are examples of areas to consider in establishing such a process.

- All protests at all levels should be in writing only.
- The school district should identify the levels of protests, including an appeal process. The levels to consider may be:
  - Level I—lead purchasing official
  - Level II—superintendent or chief financial officer
  - Level III—school district board of trustees
- The timeframe for how long a vendor can protest an award should be defined. For example, the timeframe could be five district business days after public notice of award has been published.

- The timeframe should be defined for a written response to the vendor by the school district describing the outcome of the investigation based on the grievance level. For example, the timeframe could be 10 district business days after a timely protest has been submitted.
- The next steps the vendor can take if the outcome to its protest is not in its favor.

### 3.47.1.1 Best Practice for Protests

Once the purchasing office becomes aware that a vendor is considering a protest, the office should immediately provide the vendor with the formal procedures for doing so. The lead purchasing official for the district should ask the vendor to discuss the process before the protest is submitted. Many times, protests may be avoided by communicating with the vendor first to ensure that it understands what transpired with the award. If the vendor still feels aggrieved, it should submit the protest. Once the protest has been formally submitted, all verbal or written communications outside the protest procedure process should cease.

In the event of a timely protest, the purchasing office should not proceed with the procurement unless a lead official of the school district determines that the award is necessary to protect the substantial interest of the district or the protest would not affect the outcome of the award.

For a Level III protest, the policy or procedure should state that if the protest is not successful, there are no other alternatives for the vendor to proceed further and the award will stand as originally made.

A good example of a thorough protest procedure can be found in the [19 TAC §250.3](#). Note that the protest in the statute is for procurements for TEA, not a school district, and should be modified.

## 5.47.2 Disputes

Disputes can occur for a variety of reasons from a vendor not receiving a notification of a solicitation to which they could have had interest to a pricing dispute of an awarded good or service. The school district should always allow such communications from a vendor, thoroughly consider the dispute, and provide a final determination of the district's position on the dispute.

For disputes related to post-awarded contracts, the purchasing office should consider including a method for how disputes are to be handled within its standard terms and conditions.

All disputes should be handled through a form of written communication. Many times, verbal communication is not easily clarified or agreed upon by all parties. When the school district is communicating a stance, it should always ask the vendor to respond in kind with its understanding of the district's position. This will allow for better communication between the parties.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestion*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- Establish a formal protest procedure in either district policy (recommended) or the school district's purchasing procedures (e.g., boilerplate terms and conditions).

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Review other school districts' policies or procedures to create or modify existing procedures.
- Limit communications to only those individuals involved during a protest.
- Establish timeframes for all levels of protests.
- Require all communications related to protests or disputes be only in written form.
- Consider including a description of how disputes of awarded contracts are to be handled and the dispute resolution process within the school district's standard terms and conditions.

## 5.48 Confidentiality of Documents

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*References:* [Texas Government Code, Chapter 552](#); [The Office of the Attorney General of Texas Public Information Act Handbook](#)

The procurement process of a school district is made up of partnerships between the district and the vendor community. Transparency at all acceptable levels is essential to ensure a strong, competitive environment for procurements. As part of the transparency, a district should allow access of documentation as allowed by the [Texas Government Code, Chapter 552](#).

The purchasing office should have open discussions with its legal counsel and records retention officer as to what constitutes confidentiality before any documents are released.

### 5.48.1 Legal Requirements by Procurement Method

Certain types of solicitation methods require bid responses, including the names of the respondents, fees and/or pricing, to be read aloud at the time of bid opening. A district must adhere to this requirement and follow the law and policy. These laws and policies include:

- Non-construction
  - Competitive Sealed Proposals ([TEC, §44.0352\(c\)](#))
- Construction
  - Competitive Bidding Method ([Texas Government Code, §2269.104](#))
  - Competitive Sealed Proposal Method ([Texas Government Code, §2269.154](#))
  - Construction Manager-at-Risk Method ([Texas Government Code, §2269.253](#))

### 5.48.2 Pre-award

To ensure no competitive advantage is given to one vendor over another, all information related to the solicitation and responses should be deemed confidential and only the individuals within the district who will be part of the evaluation process should have access to the information. The purchasing office should create and maintain non-disclosure agreements for these individuals.

### 5.48.3 Post-award

A method that allows vendors to determine how they did in a procurement should be created. For example, a district could publish an award tabulation providing enough information to assist the vendor in knowing how competitive it was in a specific procurement. This tabulation should be provided in a non-editable format, such as a PDF. The district should determine prior to release what information is relevant to the vendors.

### 5.48.4 Confidentiality

Some documentation may be considered confidential by the respondent and should not be released without permission from the respondent or by order of the Texas OAG. Communication with legal counsel may be necessary to ensure confidential information is not release without proper considerations.

Note: Because of the ruling in [Boeing v. Paxton \(2015\)](#), disclosure of pricing through the [Texas Government Code, §552.104](#), must allow the affected third parties to have an opportunity to submit arguments to have their information withheld during such requests. Communication with legal counsel may be necessary to ensure confidential information is not release without proper considerations.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- The district purchasing office should establish a standard of what information will be publicly provided, such as tabulations on the district website, and be consistent in the standard.

## 5.49 Records Management

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*References:* [Texas Government Code, Chapter 441](#); [Texas State Library and Archives Commission Record Retention Schedules](#)

Accurate recordkeeping and documentation should be a fundamental element of the procurement process. Precise and systematic recordkeeping and records management withstands the constant scrutiny of various interest groups including vendors, the public, and outside agencies as well as internal groups that are the users or customers of the purchasing system.

### 5.49.1 Records Management Function

This records management function should support a school district's overall information management plan and generally provide for the following:

- the flow and retention of forms including requisitions, purchase orders, petty cash, and cash reimbursement receipts
- full documentation of all competitive procurements with comprehensive competitive procurement files containing specifications, competitive procurement advertisement, precompetitive procurement conference minutes (as appropriate), competitive procurements submitted, competitive procurement tabulation, board minutes indicating competitive procurement awards (or a similar award notice), and related records
- full documentation of procurement procedures utilized to obtain goods and services through competitive sealed proposals, design/build contracts, and other procurement options
- documentation of price quotations if there are quotations obtained by school district staff for local policy compliance

The records management function may rely on electronic formats. It also may use hard copies or a combination of methods. Each school district should select the method or methods best suited to its needs.

## 5.49.2 Record Retention

The purchasing office should not rely upon the record management officer (RMO) for its district to ensure the correct documentation is made available for the duration of the retention. Though the ultimate authority rests on the RMO, the purchasing office is responsible for supporting all actions related to procurements, specifically formal actions, and should verify all required documents are maintained as required.

Familiarity with the appropriate retention schedules by the [Texas State Library and Archives Commission](#) is essential to an effect purchasing operation. It is the responsibility of the purchasing office administrator to ensure their staff is familiar with all applicable record retention schedules.

## 5.49.3 Purchasing “Due Diligence” Documentation

As part of the purchasing function, many documents support district procurement decisions, from quotes for smaller purchases to the documents necessary for the formal award of a contract.

For more informal procurements, retaining the documents at the department or campus level is sufficient if the documents are relatively available when needed. It is advisable that these documents be attached to a copy of a purchase requisition or order if applicable. These documents should be retained following the current records retention schedule.

For formal procurements, specifically those solicited under the [TEC, §44.031](#), or [the Texas Government Code, Chapter 2269](#), managing all the documentation can be critical to support major purchasing decisions. These documents could include at a minimum, but are not limited to:

- the final solicitation document(s) as published
- a comprehensive vendor mailing/notification list
- all responses to the solicitation
- the tabulation with the criteria, scores, and complete results
- an award notification and/or final contract agreement(s)

The documents should be kept consistently in a file based on the practices of the purchasing office. These files should have limited access outside the purchasing office and should be easily identifiable, such as through a bid number. Though not required by the records retention schedule, the district purchasing office should keep all other supporting documentation, such as solicitation drafts and email notifications, with the bid file.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Purchasing office staff should be familiar with the appropriate records retention schedules based on their role in conjunction with the district's RMO.
- Guidelines should be established defining the solicitation documents that are critical to an effective support file for all formal procurements.
- Bid file documents should be kept consistently based on the established practices of the purchasing office. These files should have limited access outside the purchasing office and should be easily identifiable through such means as a bid number.
- Though not required by the records retention schedule, the district purchasing office should keep all other supporting documentation, such as solicitation drafts and email notifications, with the bid file.

## 5.50 Purchasing Card (P-card) Programs – Purchasing Process

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*References: None*

Purchasing cards (P-cards) can provide efficiency, transparency, and security when utilized correctly. A P-card should be considered a payment mechanism, not a purchasing method. As the volume of transactions increases, more transactions can be processed without the addition of staff to handle the labor-intensive purchase order processes, and employees can focus on doing the job at hand rather than paperwork related to requesting, approving, logging, and ordering. The software tools provided allow supervisors to review details on vendors, timing of purchases, and the actual amount spent. Purchasing staff can focus their attention on the larger dollar, infrequent purchases, and compliance requirements.

If managed well by a district with the right controls in place to ensure compliance with purchasing guidelines and card usage, a P-card program can be very beneficial to a district.

### 5.50.1 Purchasing Office Role in a P-card Program

Unless otherwise directed by district administration, the main role for the purchasing office to perform in a P-card program is ensuring the purchases made by a cardholder meet the established guidelines of a school district purchase. On a periodic basis and no less than annually, the purchasing office should



review spend reports looking for trends in purchasing behaviors. If the purchase office notices a trend towards a category of goods or services that is not covered under a district awarded contract, the purchasing office should develop and award contracts to cover these procurements.

In some districts, the purchasing office may be given the responsibility of managing the distribution of the P-cards. This responsibility may also include establishing the card limits, by transaction or by period, for each of the cardholders based on their responsibilities and spend allowances.

## 5.50.2 P-card Program Controls

To avoid fraud and waste, P-cards must be controlled closely. Do not expect to free up 100 percent of the time spent processing purchase orders due to implementation of a P-card system. A district establishing a new P-card program should ensure enough controls are in place to limit or remove any potential misuse, malicious or not, by cardholders. These controls should be cross-departmental to allow for a continual check and balance of the program and purchases made.

### 5.50.2.1 Management and Policies

The superintendent, business manager, human resources director, and procurement director must work together to set and enforce policies and procedures. It should be clear that misuse and abuse will not be tolerated. Two ways of demonstrating this policy are including the use of the card as a factor in performance appraisals and employing a “three strikes and you are out” feature, in which an employee who misused the card or could not provide receipts would have card privileges revoked or be terminated. Reviewers should be held to the same standards as cardholders. The same set of rules should be applied to all card users.

Restrict card usage by spending limits, unauthorized merchant category codes, and time of use to business hours. Only issue cards to employees after they have completed training on the P-card program.

### 5.50.2.2 Segregation of Duties

The same employee should not buy, receive, approve, and reconcile card purchases. Different employees should set up cardholders and reviewers in the P-card system and the banking system.

Cardholders must turn in detailed receipts in accordance with policies and document the business reason. Restaurant receipts should include a line-by-line detail of the order. Cardholders also must complete training prior to receiving a card and acknowledge in writing receipt of the policy and procedure manual.

### 5.50.2.3 Reviewers

If a reviewer does not review and approve transactions according to policy, that department’s card privileges should be revoked. Reviewers should call the employee immediately upon noticing a questionable transaction rather than waiting for the due date of receipts.

Reviewers must complete training prior to reviewing transactions and acknowledge in writing receipt of the policy and procedure manual. Reviewers should be responsible for four to 10 cardholders at most to be effective.

### 5.50.2.4 Monitoring and Oversight

Keep limits as low as possible to accommodate normal business needs. If there is a need to allow for emergency purchases, certain employees can have a higher limit. Also be selective when issuing cards, and focus on repetitive, small-dollar purchases.

Selection of card reviewers should follow the same high standards applied to cardholders. The business office staff should review the work of the card reviewers. The list of P-card users should be reviewed annually.

Use the software to review the average spend by cardholder, purchases from unauthorized suppliers, purchases shipped to the cardholder's home, and purchase amounts slightly below purchase limits. Also review reports provided by the P-card programs, such as the declined authorizations report, disputes report, and lost/stolen card report, that can reveal employees in need of additional training or attempting to misuse the card.

Review district-wide activity periodically to identify frequently used vendors or products to consider negotiating volume discounts to obtain best prices for the district. Encourage staff to contact the hotline used to report any fraud.

## 5.50.3 P-card Program Procedures

In conjunction with or in the assistance of the district finance department, the purchasing office may be required in establishing the procedures of a P-card program. Procedures should be thorough and cover as many potential areas of use to provide sufficient guidance to the cardholder. These procedures can include, but may not be limited to:

- general program information and guidelines manual
- what to do if a cardholder loses their P-card or finds fraudulent purchases
- what types of items or services are considered acceptable or unacceptable use of the P-card
- non-compliant violations for misuse of a P-card and the consequences for misuse of a P-card
- how to request a new or replacement P-card
- purchasing a card transaction deadline calendar so the cardholder understands the sign-off requirements

Many districts have established successful P-card programs. If a district is investigating the possibility of a new P-card program, it is recommended that the district contact other districts to obtain their program guidelines. Many are now available online for quick access and review.

## 5.50.4 P-card Program Rebates

Many P-card programs include rebates for purchases made using P-cards. These rebate programs can provide benefit to the district. The district should establish how rebates will be handled once received. Note that federal requirements state all rebates for purchases made using federal funds must be credited back into the program funds the purchase was made through.

### *FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

- Establish basic guidelines and department responsibilities for a P-card program in local policies.
- Limit the procedural actions in the policy and instead use exhibits for the P-card manual.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Establish department responsibilities for the management of a P-card program, identifying the departments and their roles in the program.
- Create a thorough P-card manual, providing guidance, procedures, and requirements for cardholders. A district developing a new program should ask other districts for examples of program manuals.
- Determine how rebates will be re-distributed back into the district before any rebates are received.

## 5.51 Authority to Contract / Contract Agreement Procedures and Signature Authority

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*References: None*

Local policies may allow a board to delegate contracting authority to the superintendent or other designees. If this authority is given to the superintendent or a designee, these parties can bind the district under contract. If a contract is executed by an authorized designee, the district will be bound to any provision within the agreement. Documenting who within the district has such authority may assist in future contractual issues.

### 5.51.1 Areas to Consider for Signatory Authority

The follow areas are common within a school district. The district administration should identify who has the authority to bind the district.

- major contracts (high dollar, complicated scope, etc.)
- minor contracts (schedule agreements, quotes, etc.)
- grant applications
- memorandum of understanding (MOU)
- purchasing orders
- state and federal grant expenditure reporting

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

The school district should consider the following language for local policy, regulations, and/or exhibits:

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- Allow the contracting authority to be delegated to the superintendent and designees through local policies.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- If local policies include a provision for the superintendent and designees to establish contracts on behalf of the board, signature authority should be established, indicating which district staff may bind the district under a contract agreement.
- The district should maintain a list of acceptable signatories, indicating what authority the individual has in this authority. The list should be reviewed annually and updated with changes in leadership.

## 5.52 Requisition Processing

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*References: None*

A requisition is an internal document by which a campus or department of the district requests the purchasing department to initiate a purchase order. This request can be generated manually (paper) or electronically (through use of automated systems) for the purchase of supplies, services, equipment, and the like.

### 5.52.1 Approval of Requisitions

Requisitions should be initiated by those having proper authority, as defined in the district purchasing policy manual. Requisitions initiated by instructional, maintenance, and support personnel should then be approved by the appropriate person, either the principal, department head, or superintendent. Close supervision and monitoring of the availability of budget dollars and of the approval process for requisitions are important elements of a district's purchasing process. Requisitions that require expenditures from a special revenue fund should be approved by the program administrator.

### 5.52.2 Requisition Format

At minimum, requisitions should include the following components:

- a description of items to be purchased
- the quantity needed
- a suggested vendor
- the code of the account to be charged

The requisition should be in a standard format so that the information can be readily identified and transferred to a purchase order. If proper control procedures are used, the requisition and the purchase order can be combined on one form. For example, an unnumbered requisition may become a numbered purchase order once properly approved.

### 5.52.3 Flow of Requisitions

Requisitions are received by the district's central purchasing department or department responsible for this function. In smaller districts, requisitions may be received by the business office or by the superintendent. Each requisition should be reviewed for the following:

- accuracy
- availability of funds
- adequate description
- proper account coding
- overall completeness
- proper signatures

The requisition is then assigned a purchase order number, vendor number (if applicable), and purchase order date. The district should ensure that the appropriate competitive purchasing method is determined and performed before the requisition is approved for processing. After approval by the designated authority, a purchase order is issued to the vendor.

### 5.52.4 Warehouse Requisitions

Some districts keep inventories of office and teaching supplies and materials in a central warehouse.

Such inventories provide ready access to supplies that are commonly used. If the district has such a warehouse, a warehouse requisition may be used to obtain supplies or materials (normally, a catalog is available describing items in the warehouse). A warehouse requisition is completed at the department or campus level and submitted to the warehouse. Warehouse personnel then review the requisition for accuracy, completeness, and availability of funds. After processing the requisition, the supplies and materials are removed from the warehouse stock and delivered to the appropriate party.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Publish procedures for the handling of requisitions within the district.

## 5.53 Purchase Orders

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*References: None*

Purchase orders are among the most commonly utilized method for procuring goods and services. As the name indicates, this document serves as a formal order for goods, materials, and/or services from a vendor. Once approved, a purchase order is a binding commitment for a district to remit payment to the vendor after the item(s) and an invoice are received by the district.

A purchase order is also an important accounting document. It contains information on the expenditure to be made and the account code to be charged. Once issued, the purchase order encumbers funds, which serves as an expenditure control mechanism. Finally, the purchase order is utilized in the accounts payable process as it documents that an order has been received and accepted by the user and payment can be made to the vendor.

### 5.53.1 Purchase Order Process

The purchase order is the written evidence of orders placed because of properly initiated and approved purchase requisitions. A purchase order should be of a standard format to facilitate processing and should contain the following items:

- vendor name and address
- quantity of goods
- description of goods
- account codes
- price (per unit and in total)
- payment terms
- discounts, if any
- transportation arrangements
- other pertinent factors, such as delivery destination

As indicated earlier, purchase orders start with a requisition, which may be prepared manually or electronically. Requisitions originate with the user or user department and describe the item to be purchased, the quantity, pricing (if known), the account to be charged, and, normally, a suggested vendor. From the requisition, a purchase order authorizing the purchase is prepared. Most purchase orders have multiple copies that may include:

- a vendor copy that is sent to the selected vendor
- an accounting copy that is sent to the district's business office and used for encumbering funds from the proper account
- a receiving copy that is sent to the accounting department when the order is received confirming that payment should be made according the district's accounts payable process
- a user or file copy that is kept by the user department for financial management purposes

The district should establish purchase order cancellation procedures. Vendors should be informed of these procedures, and the cancellation terms should be stated on the face of the purchase order itself. For example, a district may establish that purchase orders are cancelable if merchandise is not received within 60 days. Depending on certain factors relating to the purchase, flexible cancellation dates may be more appropriate. These factors can include proximity of vendor, availability of merchandise, and quantity ordered.

### 5.53.2 Approving and Processing

The purchase order should be approved through one central office by a responsible, designated official who is educated about purchasing law, policies, and procedures. In larger districts, the purchase order may be approved by the purchasing agent; in smaller districts, by the superintendent.

The purchasing department may maintain a record of all purchase orders issued for control purposes. The log should include the date of submission, purchase order number, vendor name, and campus/department name.

### 5.53.3 Blanket Purchase Orders

A blanket purchase order is issued to a pre-approved vendor authorizing purchases from that vendor over a period of time. Blanket purchase orders are valuable because they allow the purchase of items quickly. Both paperwork and related processing costs usually are reduced by blanket purchase orders. 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 (usually one month), and identification of authorized purchasers.

Blanket purchase orders are issued so that supplies, materials, or services are available as needed by user departments. For example, blanket purchase orders may be requested on a regular basis by the food service department for perishable items. Commonly used in larger districts, these purchase orders eliminate numerous individual purchase orders for small dollar value items. Blanket purchase orders are requested by user departments and, if approved by centralized purchasing, issued to vendors.

Usually this type of purchase order remains in effect for only a specified amount of time and has a specified dollar limit. During this time, the district may purchase certain specified items from the vendor as long as the total dollar limit is not exceeded. The user department must issue a new requisition if items are requested beyond the specified time period. The advantage of blanket or open purchase orders is that merchandise is accessible to users with some flexibility and without the effort of processing purchase orders.

However, certain controls should be in place for the use of blanket purchase orders. These controls include the following:

- The number of vendors to whom blanket purchase orders are issued should be limited.
- Those who can make purchases under blanket purchase orders should be clearly designated.
- Dollar limits should be carefully followed.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no policy suggestions for this section.

#### *Best Practice Comment*

There are no best practice comments for this section.

## 5.54 Receiving and Distributing Purchases

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*References: None*

Carefully checking deliveries and making sure that those needing the delivered goods and services actually receive them as ordered is part of the purchasing process. Centralized receiving is recommended. Decentralized receiving departments and campuses are also used. The mission of both centralized and decentralized receiving is the same.

### 5.54.1 The Receiving Function—Centralized Versus Decentralized

Purchases may be received by a central receiving department or at campuses in a decentralized plan. Central receiving may consist of more than one warehouse, such as food service, maintenance, instructional supplies, and athletic supplies, and provides more control. Having only one centralized receiving point ensures that merchandise received agrees with merchandise ordered. Also, it provides for inventorying and tagging fixed assets upon receipt before distribution to campuses or departments.

In certain instances, it may be in the best interest of the district for the vendor to deliver items directly to a campus or department. This is known as “drop shipped.” The district should establish and adhere to procedures for handling alternative delivery locations, and ensure that proper approvals are obtained for items that are drop shipped.

Some districts may have decentralized receiving, although it is not recommended. If receiving is decentralized, the district should ensure that only authorized individuals trained in receiving procedures are receiving goods at the various campuses or departments. Policies and procedures must be in place regarding such receipt of goods, and monitoring should be performed to ensure that standardized policies and procedures are implemented and adhered to by those receiving goods and services. These include checking the quantity and quality of merchandise and procedures to ensure that required inventory records are maintained.

### 5.54.2 Receiving Report

Some districts lack an electronic means for tracking the receiving of orders, such as an electronic finance system. For such districts, a paper receiving report should be prepared for all merchandise that is received by the district. The receiving report may be either a part of the purchase order, such as a receiving copy, or a separate report. Upon receipt of merchandise ordered, receiving personnel compare items received to the purchase order.

Districts that have an electronic finance system for creating purchase orders and receiving orders for purchase orders should develop internal procedures on who will be entering the receiving information in the system.

Receiving personnel must have access to the specifications of the purchase prior to delivery to check for deficiencies in the order. All exceptions are noted on the receiving report, which is then dated, signed, and returned to the accounting department to be reconciled to the invoice. Damaged merchandise also



should be noted on the receiving report. The department responsible for purchasing is also responsible for contacting the vendor regarding any deficiencies.

If an order is received in partial shipments, each shipment should be recorded on the receiving report and submitted to the accounting department. The accounting department maintains a record of receipts to date until all items have been received or the purchase order has been canceled.

### 5.54.3 Quality Assurance

Appropriate steps should be taken to assure the quality of merchandise received. The first step is to examine the merchandise for obvious defects or damages. All defects and damage should be documented on the receiving report and reported to the department responsible for purchasing. This department should then contact the vendor.

Other, more formal methods may be used to test the quality of merchandise especially in larger districts. The district may prepare an inspection manual that establishes the authorities, responsibilities, techniques, and standards related to the inspection and testing of merchandise received. This information may be a separate manual or it may be included within the purchasing procedures manual. It may be more cost-efficient to perform inspection and testing only on purchases of larger dollar amounts.

It is important that district personnel who are responsible for receiving and inspecting items are trained in testing procedures. Alternatively, product testing may be an interactive process involving user departments.

### 5.54.4 Distribution

Distribution procedures should be in place for goods received at central locations. Receiving personnel may contact the ordering campus or department to inform those personnel that the goods have been received. Personnel should then distribute goods to the proper location and/or staff members, according to the specifications. For control purposes, the requesting campus or department should then compare goods received to its copy of the purchase order to ensure that they agree.

#### *FASRG Section Rule*

There are no rules for this section.

#### *Local Policy Suggestions*

There are no suggested local policies for this section.

#### *Best Practice Comment*

The school district should consider creating procedures based on the following best practices:

- Develop receiving procedures for district staff to follow for all orders placed and received.
- Develop a system to track the receiving of orders, either electronic (e.g., finance system) or paper to ensure orders are received.
- Establish procedures for staff to follow in checking for deficiencies in orders once received.

- Establish procedures or an inspection manual to ensure the quality of merchandise received, and establish the authorities, responsibilities, techniques, and standards related to the inspection and testing of merchandise received.

## 5.55 Junior College Purchases

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*References:* [TEC, §44.0311](#)

The [TEC, §44.0311](#), exempts the purchase, acquisition, or license of library goods and services for a library operated as part of a junior college district from the purchasing laws under the [TEC, §44.031](#).

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

### *Best Practice Comment*

There are no best practice comments for this section.

## 5.56 Child Nutrition Programs

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*References:* [National School Lunch Program Handbook, Administrator's Reference Manual \(ARM\), Section 17: Procurement](#)

Procurement requirements for federal child nutrition programs, known as the National School Lunch Program (NSLP), must meet the requirements established by the U.S. Department of Agriculture (USDA) and the Texas Department of Agriculture (TDA). Purchasing guidelines are established through the NSLP handbook, the [Administrator's Reference Manual \(ARM\), in Section 17: Procurement](#). Program information can be found on the TDA website at <http://www.squaremeals.org>.

The purchasing office should fully understand the differences of the requirements in [ARM, Section 17](#), for the more stringent purchases. All school district administrative personnel with child nutrition procurement responsibilities, such as child nutrition directors, managers, and purchasing staff, should be familiar with [ARM, Section 17](#). It is highly advised these individuals attend training to fully understand the requirements.

Purchases made with NSLP funds will be audited periodically (e.g., every three years) through the TDA.

### *FASRG Section Rule*

There are no rules for this section.

### *Local Policy Suggestions*

There are no suggested local policies for this section.

*Best Practice Comment*

The school district should consider creating procedures based on the following best practice:

- Attend procurement training sessions focused on the [ARM, Section 17: Procurement](#) module.

## 5.57 Petty Cash

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*References: None*

A petty cash fund is used to reimburse employees for small expenditures spent on district supplies or services and to make small district purchases. Such a fund can save time, paperwork, and associated administrative costs.

All petty cash purchases must adhere to the purchasing guidelines and procedures of the district. Authorization to purchase from this source should be clearly defined in district or campus procedures and the dollar amount for each purchase should be limited (usually between \$50 to \$100). Purchases made with petty cash may occur at both the campus and departmental level.

It is important that petty cash purchases be kept at a minimum and accurate accounting records be maintained for all purchases by employees who have been assigned as custodians of the petty cash funds.

The purchasing office should discuss with the district finance office what responsibilities, if any, the purchasing office may have with this method of funding.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.58 Bank Depository

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*References: [TEC, §§45.201–45.208](#); [19 TAC Chapter 109](#)*

The establishment of a school district's depository contract is to follow the requirements set forth in the [TEC, Chapter 45](#), and [19 TAC Chapter 109](#). The process for soliciting and award the contract is different than other procurements that follow other sections of the TEC.

The purchasing office should become familiar with the procurement process several months in advance of the expiration of the current contract because the district is required to choose whether to select a depository through competitive bidding or through requests for proposals no later than the 60th day before the date a school district's current depository contract expires.

The solicitation document is to be the current version provided by TEA. The electronic documents can be found on the TEA website.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.59 Real Property

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*References:* [TEC, §11.154](#) and [§46.011](#); [Texas Local Government Code, Chapter 272](#); [Texas Natural Resources Code, §71.005](#)

Numerous statutes provide provisions for purchasing and contracting authority of school districts and other governmental entities on contracts for the use or purchase or other acquisition of real property and improvements for school districts. Before any purchase, sell, exchange, or donation of real property is considered, a district should discuss the possibilities with legal counsel.

*FASRG Section Rule*

There are no rules for this section.

*Local Policy Suggestions*

There are no policy suggestions for this section.

*Best Practice Comment*

There are no best practice comments for this section.

## 5.60 Purchase of Instructional Materials (IMA)

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*References:* [TEC, Chapter 31](#); [TEC, §44.031](#); [19 TAC Chapter 66](#)

The Instructional Material Allotment (IMA) is managed by TEA. School districts receive an allotment to purchase instructional materials such as textbooks, technological equipment such as computers, and technology-related services such as software to be used in the classroom.

Before IMA purchases are made, the purchasing office, with the assistance of the curriculum administrators of the district, should establish procedures for selecting and purchasing IMA materials.

### 5.60.1 Purchasing Textbooks

The process of selecting a textbook for a classroom can be a challenging. The process usually includes a length review of applicable textbooks until one is selected. To facilitate this process, the purchasing office should be involved on the front end of the process, assisting as necessary to ensure the choice of text does not fall outside the state's procurement requirements.

### ***5.60.1.1 State Board of Education (SBOE) Proclamation Lists***

The SBOE establishes a list of adopted instructional materials that meets specific educational requirements. These proclamations have been vetted and negotiated by the SBOE and qualify as meeting the competitive bidding requirements to which a school district must adhere. By selecting materials off a proclamation through the processes outlined in [19 TAC Chapter 66](#), no other competitive processes are necessary.

### ***5.60.1.2 Cooperatives***

Not all materials to be selected by the district can be found in the proclamations. There are also cooperative entities where these materials can be found. The district should consider the next step in purchasing such materials to ensure that the competitive process requirements has been met. The purchasing office should ensure that an interlocal agreement has been executed with the cooperative.

### ***5.60.1.3 Other Materials not available through Proclamation or a Cooperative***

If the selected materials are not available through a proclamation or from a cooperative, the purchase should follow the requirements of the [TEC, §44.031](#), if over the legal competition threshold.

#### ***FASRG Section Rule***

There are no rules for this section.

#### ***Local Policy Suggestions***

There are no policy suggestions for this section.

#### ***Best Practice Comment***

The school district should consider creating procedures based on the following best practice:

- Before IMA purchases are made, the purchasing office should establish procedures for selecting and purchasing IMA materials with the assistance of the district's curriculum administrators.