

Attachment VI

Financial Accountability System Resource Guide, Update 16

Module 5: Purchasing

Texas Education Agency
2019

Purchasing

INTRODUCTION TO THE STRUCTURE OF EACH SECTION

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. The *FASRG* is adopted by *19 Texas Administrative Code §109.41* (“TAC”). Many of the topics correlate and match the headings found in a district’s CH(LEGAL) policy.

Within this document, the reader will find information on many procurement topics related to school district purchasing which may or may not be called out specifically within a TAC rule. Each section will include after the heading a “Reference” section. This will include any statutory, rule, or policy requirements within the section.

At the end of each section or subsection, the following three (3) additional items will be listed below the topic and guidance as applicable.

FASRG SECTION RULE

The Texas Education Agency, as the regulatory agency for Texas public and charter school district, may have established governing rules through the *Texas Administrative Code* (“TAC”), Title 19, 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 will be considered non-compliant.

LOCAL POLICY SUGGESTIONS

If a section includes suggested local policy language based on the associated topic. Any suggestions are not considered mandatory, but the wording may be considered for thorough, efficient processes within their local policies, regulations or exhibits.

BEST PRACTICE COMMENT

If a section includes a best practice comment, this is not mandatory, but considered a process a school district should consider implementing or a modified version of the process within their local procedures. Not utilizing a suggested best practice is not to be considered a non-compliant action.

Table of Contents

3.1 Overview.....8

3.2 Purchasing Ethics..... 10

 3.2.1 *Laws and Violations*..... 10

 3.2.2 *Common Standards of Ethics* 11

 3.2.3 *Vendor Relations* 12

 3.2.4 *Vendor Gifts*..... 12

 3.2.5 *Impermissible Practices*..... 13

 3.2.6 *The Purchasing Office* 13

3.3 Purchasing Policy..... 15

 3.3.1 *LEGAL versus LOCAL*..... 15

 3.3.2 *REGULATION and EXHIBIT* 16

 3.3.3 *Key Purchasing Policies* 16

3.4 Staff Development and Training 17

3.5 Purchasing Procedures Manual..... 18

 3.5.1 *The Structure of the Manual* 18

 3.5.2 *What should be included in the Manual?* 18

3.6 Purchasing Controls and Quality Assurance..... 20

 3.6.1 *Purchasing Controls* 20

 3.6.2 *Quality Assurance*..... 21

3.7 Board Authority..... 23

 3.7.1 *Disaster Exception*..... 23

3.8 Purpose of Competition 24

3.9 Commitment of Current Revenue 25

3.10 Purchase of Services below the Competitive Procurement Threshold..... 26

3.11 Purchases Valued at or above \$50,000..... 28

 3.11.1 *12-Month Aggregation* 28

3.12 Best Value Determination for Purchases Valued at or above \$50,000 31

 3.12.1 *The Definition of Best Value*..... 31

 3.12.2 *Requirement of Considering All Criteria* 32

3.13 Competitive Bidding..... 33

 3.13.1 *Opening Bids*..... 33

 3.13.2 *Safety Record*..... 33

 3.13.3 *Identical Bids* 33

3.14	Competitive Sealed Proposals	35
3.14.1	<i>Opening Proposals</i>	35
3.14.2	<i>Selection</i>	35
3.14.3	<i>Best Value Determination</i>	35
3.15	Request for Proposals (“RFP”)	36
3.16	Multiple / Catalog / Discount-from-List Contract Awards	38
3.16.1	<i>Justification for the Establishment of a Multiple Award Contracts</i>	38
3.16.2	<i>Solicitation Method for Multiple Award Contracts</i>	38
3.16.3	<i>Best Value Criteria for Multiple Award Contracts</i>	38
3.16.4	<i>Periodic, Extension and/or New Multiple Award Solicitations</i>	39
3.16.5	<i>Types of Multiple Award Contracts</i>	39
3.16.6	<i>Limited Response Period versus Extended Period for Multiple Award Contracts</i>	40
3.16.7	<i>Board Approval of Multiple Award Contracts (as applicable based on district CH(LOCAL) policy)</i>	40
3.17	Interlocal Agreements	42
3.18	State Purchasing Program	43
3.18.1	<i>District Requirements</i>	43
3.19	Multiple Award Contract Schedule – Texas Comptroller’s Office (CH)	45
3.20	Cooperative Purchasing Program	46
3.21	Contract-Related Fee	47
3.22	Reverse Auction	48
3.23	Bidder’s Principal Place of Business and Preference Laws	49
3.23.1	<i>Identical Bids</i>	49
3.23.2	<i>Bidder’s Principle Place of Business</i>	49
3.23.3	<i>Reciprocity Preference Laws</i>	49
3.24	Methods for Construction Services	51
3.24.1	<i>Competitive Bidding</i>	51
3.24.2	<i>Competitive Sealed Proposals</i>	51
3.24.3	<i>Construction Manager-Agent</i>	51
3.24.4	<i>Construction Manager-At-Risk</i>	52
3.24.5	<i>Design-Build Contracts</i>	52
3.24.6	<i>Job Order Contracting</i>	53
3.25	Construction versus Maintenance Services	54

3.26	Required and Suggested Contract Provisions	56
3.26.1	<i>Felony Conviction Notice</i>	56
3.26.2	<i>Criminal History Certification</i>	56
3.26.3	<i>Boycott Israel</i>	56
3.26.4	<i>Relationships with Foreign Entities</i>	57
3.26.5	<i>Additional Provisions</i>	57
3.27	Disclosure of Interested Parties	60
3.27.1	<i>Exclusions</i>	60
3.27.2	<i>Required Form</i>	60
3.27.3	<i>Deadline</i>	60
3.27.4	<i>Contract Changes</i>	61
3.27.5	<i>Definitions</i>	61
3.28	Contract with Person Indebted to District	63
3.29	Notice Publication (Newspaper Advertisements)	64
3.29.1	<i>Definition of a Newspaper</i>	64
3.29.2	<i>Timing of the Advertisement</i>	64
3.30	Electronic Bids or Proposals	66
3.30.1	<i>Procedures for Receipt of Electronic Bid or Proposal Responses</i>	66
3.30.2	<i>Sealing of Electronic Responses</i>	66
3.30.3	<i>Electronic Vendors List</i>	66
3.30.4	<i>Responses to Electronic Solicitations</i>	66
3.31	Professional Services	68
3.31.1	<i>Request for Qualifications</i>	68
3.31.2	<i>Cooperative Contracts not allowed for Architects or Engineers</i>	69
3.31.3	<i>Use of Federal Funds for Professional Services</i>	69
3.32	Emergency Damage or Destruction	70
3.32.1	<i>Types of Emergencies</i>	70
3.32.2	<i>Delegation of Authority</i>	70
3.33	Computers and Software	72
3.33.1	<i>Technology Department's Involvement in the Purchase of Technology</i>	72
3.33.2	<i>Purchases of Software and Applications</i>	72
3.34	Automated External Defibrillators	74
3.35	Single or Sole Source	75
3.35.1	<i>Reviewing and Processing of Single Source Claims</i>	75

3.35.2	<i>Single Source Claims by Vendors</i>	75
3.35.3	<i>Single Source and Federal Funds</i>	76
3.36	Insurance	77
3.37	Background Checks for Criminal History	78
3.37.1	<i>Background Checks - Definitions</i>	78
3.37.2	<i>Contractor Employee Eligibility</i>	78
3.37.3	<i>National Criminal History Check</i>	79
3.37.4	<i>Contractor Requirements to Secure Criminal History Information on Employees</i>	79
3.37.5	<i>Fingerprinting of Contractor Employees</i>	79
3.37.6	<i>Emergencies</i>	79
3.38	Felony Conviction Notice	81
3.39	Change Orders	82
3.40	Energy or Water Conservation Measures (CH)	83
3.41	Recycled Products (CH)	84
3.42	Agricultural Products	85
3.43	Federal Requirements	86
3.44	Bus Purchase or Lease	87
3.45	Right to Work	88
3.46	Lobbying Restriction: Tobacco Education Grant Funds (CH)	89
3.46.1	<i>Byrd Anti-Lobbying Amendment</i>	89
3.46.2	<i>Certification Regarding Lobbying</i>	89
3.47	Protests Procedures and Dispute Resolutions	91
3.47.1	<i>Protests</i>	91
3.47.2	<i>Disputes</i>	92
3.48	Confidentiality of Documents	93
3.48.1	<i>Legal Requirements by Procurement Method</i>	93
3.48.2	<i>Pre-award</i>	93
3.48.3	<i>Post-award</i>	93
3.48.4	<i>Confidentiality</i>	94
3.49	Records Management	95
3.49.1	<i>Records Management Function</i>	95
3.49.2	<i>Record Retention</i>	95
3.49.3	<i>Purchasing "Due Diligence" Documentation</i>	95

3.50	Purchasing Card (“Pcard”) Programs – Purchasing Process	97
3.50.1	<i>Purchasing Office Role in a Purchasing Card Program</i>	97
3.50.2	<i>Purchasing Card Program Controls</i>	97
3.50.3	<i>Purchasing Card Program Procedures</i>	98
3.50.4	<i>Purchasing Card Program Rebates</i>	99
3.51	Authority to Contract / Contract Agreement Procedures and Signature Authority	101
3.51.1	<i>Areas to Consider for Signatory Authority</i>	101
3.52	Requisition Processing	102
3.52.1	<i>Approval of Requisitions</i>	102
3.52.2	<i>Requisition Format</i>	102
3.52.3	<i>Flow of Requisitions</i>	102
3.52.4	<i>Warehouse Requisitions</i>	103
3.53	Purchase Orders	104
3.53.1	<i>Purchase Order Process</i>	104
3.53.2	<i>Approving and Processing</i>	105
3.53.3	<i>Blanket Purchase Orders</i>	105
3.54	Receiving and Distributing Purchases	107
3.54.1	<i>The Receiving Function – Centralized versus Decentralized</i>	107
3.54.2	<i>Receiving Report</i>	107
3.54.3	<i>Quality Assurance</i>	107
3.54.4	<i>Distribution</i>	108
3.55	Junior College Purchases	109
3.56	Child Nutrition Programs	110
3.57	Petty Cash	111
3.58	Bank Depository	112
3.59	Real Property	113
3.60	Purchase of Instructional Materials (IMA)	114
3.60.1	<i>Purchasing Textbooks</i>	114

3.1 Overview

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 which include the:

- *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 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 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 of these service areas and 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 those from 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:

- 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 addresses 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.

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

- *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, on-going 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 that 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

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

- Establishment of the Purchasing Process (Requisition process through PO) ensuring segregation of duties
- The approval process as mandated by fiscal authorities or assigned designees in order to establish 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.

3.2 Purchasing Ethics

References: Texas Education Code 44.032, Texas Local Government Codes 171, 176 and 271.029, Texas Government Code 2155.062(d), Texas Penal Code Chapter 36, and Policy CH(LEGAL)

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 to be considered to be held to the highest standards are the following: Board Trustee, Superintendent 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 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 any onboarding 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 for either moving forward or removing that individual from the purchasing process due to a conflict. All completed 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, which 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.

3.2.1 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, §44.032 and Local Government Code, §271.029.

Numerous problems may be encountered including:

- Employees, in an effort to get the job done successfully and on time, could be tempted to circumvent policies, procedures, and laws, or to make their own liberal "legal" interpretations of existing policies. Such activity, although well intentioned, will cause ethical problems.
- Sequential purchasing of the same items or type of items over the course of twelve 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 means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

3.2.2 Common Standards of Ethics

Credit for the content of this section is given to the purchasing handbook published by the Comptroller of Public Accounts, Standard Financial Management System for Texas Cities and Counties, Model Purchasing Manual.

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

1. It is a breach of ethics to attempt to realize personal gain through public employment with a school district by any conduct inconsistent with the proper discharge of the employee's duties.
2. It is a breach of ethics to attempt to influence any public employee of a school district to breach the standards of ethical conduct set forth in this code.
3. It is a breach of ethics for any 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.
4. Gratuities – It is a breach of ethics to offer, give, or agree to give any employee or former employee of a school district, or for any employee or former employee of a school district to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a

program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense.

5. Kickbacks – 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.
6. Contract Clause – The prohibition against gratuities and kickbacks prescribed above should be conspicuously set forth in every contract and solicitation therefore.
7. 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.

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 abstain from discussion and decisions regarding the award of the procurement contract. (See 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.

3.2.3 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 “arms-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.

3.2.4 Vendor Gifts

School district officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, whether directly or indirectly, which 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.

It is a good practice for a school district to consult with its attorney and/or other legal counsel at Texas Education Agency (TEA) or the Attorney General’s Office to develop policies regulating the acceptance of vendor gifts. These policies should not only conform to applicable statutes but should also reflect the district’s philosophy regarding regulation of the acceptance of the following from existing or prospective vendors:

- Meals
- Trips
- Tickets for entertainment
- Gifts of any value

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(s), 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.

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 which prohibit an employee (and members of the employee's immediate family) who is involved in administering, directing or authorizing federally funded transactions from having a financial interest in a vendor associated with federally funded transactions.

3.2.5 Impermissible Practices

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

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

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

3.2.6 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. "Arms' 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 SUGGESTIONS

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

- The district should review its DBD(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 base on the following best practices:

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

3.3 Purchasing Policy

References: Texas Education Code 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, of course, 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 Section 3.4 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. The structure itself, therefore, should not be based on historical methods and "the way it's 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. Execution of the policies must be consistent to ensure similar purchases are handled in the same way.

Most all school districts in the State of Texas utilize the Board Policy Manual managed by the Texas Association of School Boards ("TASB") found online at <https://www.tasb.org>. These policies should be reviewed periodically for accuracy and relevancy to ensure the district's needs are met through viable policies.

3.3.1 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 Texas Education Code;
- Texas Office of the Attorney General opinions;
- The Texas Administrative Code, including Commissioner's and State Board of Education rules;
and
- Other sources of authority defining the legal aspects of a local school district governance and management.

LEGAL policies include the designation "(LEGAL)" next to the assigned alpha code (e.g. "CH (LEGAL)") and reference provisions from federal and state statutes and regulations, case law, and other legal authority. 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 and have the designation "(LOCAL)" next to the assigned alpha code.

3.3.2 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 EXHIBITS supplement district manuals and assist in the implementation of LOCAL policies. REGULATION policies have the designation “(REGULATION)” next to the assigned alpha code.

EXHIBIT can be used to provide forms or documents used by the district and have the designation “(EX-HIBIT)” next to the assigned alpha code.

3.3.3 Key Purchasing Policies

Below are the policies most utilized in procurement processes:

- CH – Purchasing and Acquisition
- CDB – Other Revenues - Sale, Lease or Exchange of School-owned Property
- CHE – Purchasing and Acquisition – Vendor Relations
- CJA – Contracted Services
- CQ – Technology Resources
- CI – School Property Disposal
- CV – Facilities Construction (plus additional method specific policies)
- DBD – Employment Requirements and Restrictions – Conflict of Interest

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 base on the following best practices:

- 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.

3.4 Staff Development and Training

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 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 on-going 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
- 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, by professional associations, or an 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 base on the following best practices:

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

3.5 Purchasing Procedures Manual

References: None

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

3.5.1 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 and often is used to acquaint vendors and suppliers with the school district's policies and procedures. Internally, the manual helps in training 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. Keep it simple, accessible, and relevant.

The purchasing manual should be a living document, reflecting current practices, but also integrating changing rules and regulations as they occur. The school district should update their manual at least every two years to ensure any changes in practice are made as well as to address any changes in practice are made as well as to address any legislative changes to purchasing regulations.

NOTE: Federal guidelines requires 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.

3.5.2 What should be included in the Manual?

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

- Standards of conduct – Ethics, Conflict 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 how a purchase order is processed
- Guidance on minor (e.g. low-dollar, quotes, spot purchases) and major (e.g. high-dollar and/or complex solicitations) procurements are to be handled
- 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 base 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 (e.g. intranet, web pages, etc.).
- The purchasing office should update their manual a minimum of every two years to ensure any changes in practice are made as well as to address any changes in practice are made as well as to 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 due to its relevancy to meeting the school district's needs through procuring products and services and reviewing/updating it 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 requires a school district to document its own procurement procedures, which reflects applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. This can be integrated within the other purchasing procedures.

3.6 Purchasing Controls and Quality Assurance

References: Texas Education Code 44.031(d) and Policy CH (LEGAL)

A school district should create a strong control environment to perform all purchasing functions. The purchasing manual (reference Section 3.4) 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 which 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 it is likely that this situation may reoccur, 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. On-going training on purchasing procedures can enhance controls.

3.6.1 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, along with the finance director, and ultimately the superintendent are responsible to ensure that duties among purchasing and accounting personnel are properly segregated (to the degree possible) to provide a checks-and-balances environment.
- **Maintenance of purchasing files and records.** The 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, the purchase order, and the 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.

3.6.2 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.

Below are potential areas of quality controls the purchasing office may have responsibilities.

- 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 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 stating 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 should be given the vendor. 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 established in the purchasing manual for review and compliance by district employees.

BEST PRACTICE COMMENT

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

- The school district purchasing authority should review each control listed and develop their 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.

3.7 Board Authority

References: Texas Education Code 44.031(d), 44.0312, and Policy CH (LEGAL)

Certain authorities have been given to a school district's Board of Trustees to govern their 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.

3.7.1 Disaster Exception

In the event of a catastrophe, emergency, or natural disaster affecting a district, the board may be required to declare an emergency per the Texas Education Code 44.031(h), which exempts contracted actions from the purchasing provisions of TEC 44.031. This requires a formal board action. If deemed acceptable by the board to provide more efficient and timely actions to contract for emergency replacement or repairs, this authority may be delegated to the superintendent or designated person. Such delegation will be identified within Policy CH(LOCAL).

FASRG SECTION RULE

There are no rules for this section.

LOCAL POLICY SUGGESTIONS

The school district should consider the following language for CH(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 CH(LEGAL)."
- 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 base on the following best practices:

- 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.

3.8 Purpose of Competition

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 tax payers. The district should, through the assistance of the purchasing office, effectively monitor and compete expenditures, spend funds wisely in light of the best interest of the student and the district.

The purchasing office should not be considered a "Yes" or "No" department but one which assists the needs of the district by partnering with the end users to secure 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 base on the following best practices:

- 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.

3.9 Commitment of Current Revenue

References: Texas Local Government Code 271.903 and Policy CH(LEGAL)

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 to the board the 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:

- CE(LOCAL): 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 base 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.

3.10 Purchase of Services below the Competitive Procurement Threshold

References: None

NOTE: The information provided within the section does not cover purchases which qualify as a single source item as defined by Texas Education Code 44.031(j), or any professional services identified within Texas Education Code 44.031(f) or Texas Government Code Chapter 2254. Review Sections 3.20 *Sole Source* and 3.15 *Professional Services* within this FASRG module 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)), and it is deemed to always be in the best interest of a school district to compete all purchases no matter the dollar amount. This section does not include any single purchase or contract worth more than the current legal threshold. This section 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:

- *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 Section 3.24 *Interlocal Agreements* for more information.
- *Professional Organization.* An employee of the school district pays to obtain a membership into an exclusive professional organization, registration fees related to school business, 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) who is trained in a specific discipline or area of expertise, and the school or department must pay a fee in order 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 Texas Education Code 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 in order 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.

- Subscriptions. Subscription fees to particular professional publications needed in the performance of duties or educational requirements.
- Field Trips. Field or student trips to specific locales or one-time, limited events.
- Venue - Student. A particular facility location makes it prohibitive to go to another less conducive location based on proximity to the school or facility (Examples: Swim facilities, golf course, etc.). 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 Texas Education Code 44.031.
- Venue – Extracurricular. Based on availability or schedule, a particular rental property, facility or location is chosen while other locations are unavailable or are not conducive to the needs of the school district (Example: 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.

FASRG SECTION RULE

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

- Establish local CH 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 CH(LOCAL) how the district will manage procurements which 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 base 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 which will be valued greater than the current legal threshold annually.
- If utilizing a governmental entity on a consistent basis for same services, the school district should consider establishing a formal interlocal with the entity.

3.11 Purchases Valued at or above \$50,000

References: Texas Education Code 44.031(a) and Policy CH (LEGAL)

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 shall be made by one of the procurement methods that may provide 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 Chapter 2269, Government Code, for construction services;

The reverse auction procedure as defined by Government Code 2155.062(d).

The formation of a political subdivision corporation under Local Government Code 304.001.

As noted within several of the methods provided above, the district must utilize the Texas Government Code 2269 for all construction related procurements. TGC 2269 identifies allowable procurement methods available to the district for consideration based on what is the best value for the district.

3.11.1 12-Month Aggregation

The term “aggregate”, as used in 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, and 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 which best meets its tracking needs.

It is the responsibility of the school district to determine the method or structure of the aggregation process. As a result of this 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.

Categories and Commodity Codes

As stated above, categories or commodity codes, can assist a district to report and understand 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 which would be included in the

aggregate. The limitation of utilizing categories is some finance systems may not have the ability to run reports against the individual descriptions.

As for commodity codes, on the most basic level, 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 the basis of the annual aggregation and the ability of the finance system.

A school district may choose to create their 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 which best fits their needs. Below are potential codes a school district to 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 and be minimal in length (easily adopted but may surpass the legal threshold quickly, less management / oversight) versus very detailed in length (more difficult to learn and implement but less chance of exceeding the legal threshold, more management / oversight).

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

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 purchases "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.

The district should remain diligent in monitoring the requirements for federal funds through TEA Department of Contracts, Grants and Financial 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 base on the following best practices:

- Select and identify the 12-month period (by calendar or by fiscal year) which 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 is established by NIGP. While NIGP may be very detail oriented in its entirety the code may be modified to meet the needs of the district based on size. It is suggested the district request examples of other Texas school districts.

3.12 Best Value Determination for Purchases Valued at or above \$50,000

References: Texas Education Code 44.031(b) and Policy CH (LEGAL)

As stated in the Texas Education Code, Subsection 44.031(b), in awarding a contract, a district shall 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, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.

Any other relevant factor specifically listed in the request for bids or proposals.

3.12.1 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 such as 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. Below is an example of how points could be broken down:

Example Weighted scoring:

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, beneficial options not specified in the specifications	5 points
References	5 points
Total Points 100 points	

Each solicitation is unique, therefore there will be modifications to be made to both 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.

Weighted Pricing

It is commended the purchasing office 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 taking the price bid and dividing it by the lowest price of all responsive bids and multiplying the number by the points assigned. The formula will look something like the below:

- (Lowest Responsive Bid / Vendor's Bid Price) x Assigned Points = Vendor's Points for Price

Example price weighted scoring:

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

3.12.2 Requirement of Considering All Criteria

The phrase "shall consider" within 44.031(b) creates a requirement where a contract must be awarded considering all nine items to the extent possible. Each criterion identified in the law has to be considered in the evaluation process. As stated in 3.8.1 above, specific criteria had an establish weight assigned to it based on the importance of the criterion. The example in 3.8.1 shows "Price" to have a weight of 60 points. However, not all items from 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, however, 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.

3.13 Competitive Bidding

References: Texas Education Code 44.0351, Texas Local Government Code 271.901, and Policy CH(LEGAL)

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

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

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

3.13.1 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 for the purpose of correcting an error in the bid price.

A board shall have the right to reject any and all bids.

3.13.2 Safety Record

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

- 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.

3.13.3 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 select only one bidder from the identical bids.

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

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

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.

3.14 Competitive Sealed Proposals

References: Texas Education Code 44.0352 and Policy CH(LEGAL)

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

3.14.1 Opening Proposals

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

3.14.2 Selection

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

3.14.3 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.

3.15 Request for Proposals (“RFP”)

References: Texas Education Code 44.031(a), and Policy CH(LEGAL)

A Request for Proposals (RFP) is a part of the competitive sealed proposal process. (The term “RFP” can also refer to an alternative purchasing method authorized by TEC 44.031(a) and further explained below.) The RFP is the mechanism that generates the receipt of competitive sealed proposals and should contain several 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 among an RFP (as an alternative purchasing method), competitive bidding, and competitive sealed proposals include:

- An RFP is not required by law to be sealed, e.g. that 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
- Competitive Sealed Proposal must be used for award of a construction contract
- Competitive Procurement Limit Summary is identical to competitive bidding
- Newspaper Advertisement is identical to competitive bidding
- Notice to Proposers is identical to competitive bidding
- 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.

3.16 Multiple / Catalog / Discount-from-List Contract Awards

References: Texas Education Code Section 44.031, and Policy CH(LEGAL)

Due to the unique needs of a school district and the inability to predict the instructional needs of the classroom, the maintenance requirements in numerous facilities, professional development, etc., many districts utilize what is termed a “multiple award”, “catalog” or “discount from list” type contract awards (collectively identified herein as “multiple award contracts”). 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.

3.16.1 Justification for the Establishment of a Multiple Award Contracts

The establishment of one 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 due to the legal aggregation requirements, the district has an obligation issue a formal procurement.

3.16.2 Solicitation Method for Multiple Award Contracts

The multiple award contracts should be awarded through a request for proposal per TEC Section 44.031(a)(3) due to the flexibility of the method. Proposals should, if at all possible, include pricing information (unit process, catalog discount, etc.).

3.16.3 Best Value Criteria for Multiple Award Contracts

As required by Texas Education Code 44.031(b), the district shall consider the criteria found in statute. The district shall select the offeror(s) that offer the best value for the district based on the published selection criteria and on its ranking evaluation.

3.16.4 Periodic, Extension and/or New Multiple Award Solicitations

The purchasing office should establish guidelines which would 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 where a single award, competitive solicitation may now 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.

3.16.5 Types of Multiple Award Contracts

- Multiple Award – Multiple vendors exist, but unique drivers such as but not limited to expedited receipt or delivery, overburdened competitors which may not be able to meet time requirements, variances in the goods or services provided may require one vendor over another. Examples are, but not limited to:
 - 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 (e.g. disc jockey (DJ) services, carnival type services, prom or graduation event services, etc.)
 - 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 exists but unique drivers exist such as but not limited to special needs of the students or curriculum, choices of types of items available, etc. The vendor may or may not provide a discount from their established pricing. These types of awards

historically have been based on a printed catalog with pricing provided by the vendor and now includes online websites. This type of contract award may also include “shelf” (in store) pricing. Examples are, but not limited to:

- Classroom Instructional Materials
- Fine Arts Equipment & Supplies
- Health and First Aid Equipment & Supplies
- Vocational Equipment & Supplies
- Retail General Merchandise
- Maintenance and Operations parts not available through an existing District contract

3.16.6 Limited Response Period versus Extended Period for Multiple Award Contracts

Normal procurement practices will allow for solicitation responses be submitted to the district within a limited, specific period of time, usually two to three weeks. The district may want to review past history to determine if a limited time to response 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 will be considered a normal, formal request for proposal. Considerations like newspaper advertisements, awards made and limited to only the responders which submitted and awarded for the solicitation.
- Extended Response Period. This choice will more informal than a limited response period. The major difference is the date responses are due. This method allows for responses to be accepted throughout an extended period of time such as the date of the contract award expiration and awards made periodically. Periodic board approval may also be required.

For newspaper advertisements, though the statutory requirements had been met with the initial publication, the district should consider periodic republication of the advertisement to cover concerns of transparency and announcing the solicitation to new readers.

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

“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.”

3.16.7 Board Approval of Multiple Award Contracts (as applicable based on district CH(LOCAL) policy)

If your local CH policy requires awards be approved by board action, the purchasing office should plan for how this will occur. This may be providing a list of suggested awards for the last period as an agenda item. The district administration may want to consider, at a minimum, requesting multiple awards be done by report. The district may want to also consider requesting 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.
- The district may choose to establish procedures or guidelines starting at a specific dollar threshold the end user must attempt to secure quotes from within the awarded vendors.
- 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 these types of awards will provide a level of authority to the decision. This memo should indicate historically purchases made through such contracts cannot be predicted and/or identified until the need occurs, and due to the legal aggregation requirements the district has an obligation to go to a formal solicitation and award.
- The purchasing office should establish guidelines which would require periodically 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 within the solicitation a statement on how responses will be managed once received from a potential responder.
- The district administration may want to consider, at a minimum, requesting multiple awards be done by report. The district may want to also consider requesting the board allow for awards to be immediately effective so purchases can be made by the end user sooner than after a board action

3.17 Interlocal Agreements

References: Texas Government Code 791.001, .011(d)-(f) and (j), .025(b)-(c), Attorney General Opinion JC-37 (1999), and Policy CH(LEGAL)

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

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

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

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

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

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

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

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

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.

3.18 State Purchasing Program

References: Texas Local Government Code 271.082 and Policy CH(LEGAL)

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

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

3.18.1 District Requirements

References: Texas Local Government Code 271.083 and Policy CH(LEGAL)

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

- 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.

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 the following language for local policy, regulations and/or exhibits:

- CH(LOCAL): Purchasing Method: The Board delegates the Superintendent or designee the authority to determine the method of purchasing in accordance with CH(LEGAL).
- CH(LOCAL): Purchasing Authority: The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that cost \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place.

BEST PRACTICE COMMENT

The school district should consider creating procedures base 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.
- 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.
- In the case that 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.

3.19 Multiple Award Contract Schedule – Texas Comptroller’s Office (CH)

References: Texas Government Code 2155.502 and .504, and Policy CH(LEGAL)

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state.

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

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

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.

3.20 Cooperative Purchasing Program

References: Texas Local Government Code 271.102, Attorney General Opinion JC-37 (1999), and Policy CH(LEGAL)

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:

- 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.

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:

- CH(LOCAL): 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 base on the following best practices:

- Districts are not required to participate in a cooperative purchasing program and 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.

3.21 Contract-Related Fee

References: Texas Education Code 44.0331 and Policy CH(LEGAL)

A school district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

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

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.

3.22 Reverse Auction

References: Texas Education Code 44.031(b)(5), Texas Local Government Code 271.906(b), Texas Government Code 2155.062(d), and Policy CH(LEGAL)

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

Reverse auction procedure means:

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

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.

3.23 Bidder's Principal Place of Business and Preference Laws

References: Texas Education Code 44.031(b-1), Texas Local Government Code 271.0275, Texas Government Code 2252.001 through .004 and Policy CH (LEGAL)

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.

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

3.23.1 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. Below 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 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 at the time the casting of lots occurs.

If the solicitation to which the identical bids was solicited with best value criteria and/or has the ability to be negotiated, it is advised the purchasing office should consider further means of identifying a most responsive bidder to remove the tie. This may include a best and final offer process.

3.23.2 Bidder's Principle Place of Business

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

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

3.23.3 Reciprocity Preference Laws

State of 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 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/>.

This 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 base on the following best practices:

- Establish the manner of 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 determine a most responsive bidder to remove the tie. This may include a best and final offer process.

3.24 Methods for Construction Services

References: Texas Government Code Chapter 2269

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, before advertising, determine which method provides the best value for the governmental entity. The governmental entity should:

- Base its selection among offerors on applicable criteria listed for the particular method used
- Publish in the request for proposals 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 not later than the seventh day after the date the contract is awarded

Methods for construction services authorized under 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 TGC 2155.062(d))

3.24.1 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 Occupations Code, Chapter 1051 or 1001, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

3.24.2 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.

3.24.3 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 Occupations Code, Chapter 1051 or 1001, as applicable, to prepare the construction documents required for a project.

3.24.4 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

3.24.5 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 Texas Education Code, 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:

- 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 Texas Attorney General Opinion JC-0037 (1999).

3.24.6 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, type, and quantities of work required are indefinite.

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

3.25 Construction versus Maintenance Services

References: Texas Education Code 44.031, Texas Government Codes 2253, 2258, and 2269, Texas Labor Code 406, Texas Occupation Code 1001 and 1051, and Policies CH(LEGAL) and CV(LEGAL)

Determinations of whether a contractor is engaged in maintenance operations rather than construction activities must be made on a case-by-case basis, taking into account all information available at a particular site. Factors to determine whether a project constitutes maintenance or construction:

- 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 should be considered

If architect or engineering services are required for the services, if the work triggers requirements for compliance with updated building codes, or if 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 TGC Chapter 2269. (aka “public work” contracts) include both traditional construction and contracts to alter or repair a building.¹ Contracts for Construction Services are subject to laws applicable to public works, including, but not limited to, prevailing wages (TGC Chapter 2258); payment and performance bonds (TGC Chapter 2253); mandatory workers’ compensation coverage for laborers (Texas Labor Code § 406.096); requirements related to the use of licensed architects and engineers (e.g., Texas Occupations Code Sections 1001.407; 1001.053; 1051.703).

Maintenance Services may be procured using one of the methods set forth in TEC Section 44.031(a), or through the Job Order Contracting method set forth in TGC Chapter 2269. Maintenance Services are defined as:

- ordinary upkeep or repairs necessary to preserve something in good condition
- 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”²

¹ LA Ash, Inc. v. Tex. A&M Univ., 2008 Tex. App. LEXIS 8206, 2008 WL 4742135 (Tex. App. Waco Oct. 29, 2008); see also, Acratod Co. v. Housing Auth. of Houston, 1999 Tex. App. LEXIS 889, 1999 WL 82450 (Tex. App. Houston 1st Dist. Feb. 11, 1999).

² See Tex. Att’y Gen. Op. No. O-1216 (1930)

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.

3.26 Required and Suggested Contract Provisions

References: Texas Education Code 44.034, Texas Government Code 808.001(2) and 2270.002, Texas Business and Commerce Code 322, and Policy CH(LEGAL)

Texas statute makes it necessary for certain contract provisions be included in some if not all vendor contracts, and a number of additional provisions are in the best interest of the district to include as well. A district should review all solicitations to ensure their 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 all agreed to provisions are enforceable in a court of law or is binding in arbitration as a waiver of immunity. It has been identified something as simple as an email between both parties can be binding.

The school district should consult with legal counsel on the below and all other provisions before they become formal through an executed agreement.

3.26.1 Felony Conviction Notice

Texas Education Code, Subsection 44.034(a), Notification of Criminal History, states “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.”

Subsection (b) states “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.

3.26.2 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 it has received all required criminal history information and relevant employees with disqualifying criminal histories are not serving the district. See FASRG Section 3.53 *Background Checks for Criminal History* for additional guidance.

3.26.3 Boycott Israel

Texas Government Code (TGC) 808.001(2) and 2270.002, a district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract.

As defined TGC 808.001(2), a “company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

Non-profits and other governmental agencies are exempt from requiring the Boycotting Israel and Foreign Entities addendum.

3.26.4 Relationships with Foreign Entities

In accordance with Texas Government Code Chapter 2252, Subchapter F, Contractor certifies 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.

Contractor further certifies and verifies that, pursuant to Texas Government Code Chapter 2270, neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and Contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement.

3.26.5 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 (e.g. solicitations, standard district agreements, etc.)

Indemnification of the Vendor

The State of Texas Constitution prevents public entities from entering into 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 their agreement, the district should insist the phrase "to the extent allowable by State of Texas law" be added.

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.

Choice of Law

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

Availability of Funds

Legally, a district cannot obligate funds beyond the current appropriations. All solicitations should include a provision stating the award and subsequent purchases are based only on the current fiscal period are contingent upon the continued availability of appropriations and is 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, and goods delivered but unpaid should be returned to the vendor if possible.

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

Time Period of the Contract or Agreement

A provision should be included in a solicitation and/or agreement establishing the effect from date, be it 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 the district wishes to extend a contract after the expiration date, the original solicitation and award is to 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 contracts which have expired cannot be re-establish as active.

An extension provision should include the type of extension option it will be. A sole option type of extension means 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 for the decision to extend 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 of time to allow the district consider alternative directions which will not include the current contract. The district should include wording in the solicitation allowing for a specific limit of additional time if required to avoid a contract lapse. This should be done only as a sole option of the District. A maximum period of ninety (90) days is considered optimum. Again, this should be based on the current contract pricing, terms and conditions, and should be done in writing prior to the end of the current contract term.

Other points to consider

There are many variations and terms which could or should be included within a solicitation and/or contract agreements. Below are others to consider. As stated above, the district should consult with their legal counsel before these provisions are included.

- 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

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

- Review with the district's legal counsel the provisions which should be included in all solicitations and/or agreements.

3.27 Disclosure of Interested Parties

References: Texas Government Code 2252.908, 2252.908(c)(4)-(6), Texas Administrative Code 1TAC 46.1(c), and Policy CH(LEGAL)

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 \$1 million, with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.

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.

3.27.1 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 Utilities Code 31.002; or
- A gas utility, as defined by Utilities Code 121.001.

3.27.2 Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2).

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

Before a school district can enter into a contract with an entity that will require Board Approval or has a value of at least \$1million, 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, the district has 30 days to acknowledge receipt of the Form 1295 in the Texas Ethics Commission website. The district should keep a copy of the acknowledged form and file with the contract.

3.27.3 Deadline

A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure.

3.27.4 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 \$1 million; or
- The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract.

3.27.5 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, and 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 ten 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 ten 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 BBFA policies.

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.

3.28 Contract with Person Indebted to District

References: Texas Education Code 44.044 and Policy CH(LEGAL)

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 (e.g. 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 base on the following best practices:

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

3.29 Notice Publication (Newspaper Advertisements)

References: Texas Education Code 44.031(g), Texas Government Code 2051.042, and Policy CH(LEGAL) and GC(LEGAL)

Texas school districts have a requirement of placing advertisements in local newspapers for any formal solicitation. The advertisement must follow the requirements below:

- 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 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. It is recommended 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, but if not, 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 are 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.

3.29.1 Definition of a Newspaper

Per Texas Government Code 2051.044, the following are requirements for a newspaper to be utilized for advertisements of solicitations per Texas Education Code 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 has been published regularly and continuously under Subsection (a) if the newspaper omits not more than two issues in the 12-month period.

Note this section does not apply to school districts in counties who border the Red River. See TGC Subsection 2051.0441 for addition or separate requirements.

3.29.2 Timing of the Advertisement

A school district Per Texas Local Government Code 271.025 which is related to public works projects (construction), the statute states the school district must mail (publish) the solicitation 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 your advertisements to reduce cost.
- Document in your bid file with proof of advertisement.
- To ensure compliance with the best practice of a two week period, it is suggested the purchasing office not open any bids prior to two full weeks or 14 days after the first advertisement date.

3.30 Electronic Bids or Proposals

References: Texas Education Code 44.0313, Texas Local Government Code 271.0065, and Policy CH(LEGAL)

A number purchasing offices utilize or are considering the implementation of some form electronic bidding system. The purchasing office should ensure the system is properly implemented and legal requirements are met before any solicitations are published and responses are received.

3.30.1 Procedures for Receipt of Electronic Bid or Proposal Responses

If such a procedure exists, the district's Board of Trustees must adopt rules to ensure the identification, security, confidentiality, and 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 CH(LOCAL) policy. A school district should request examples from other districts who have adopted the rules and modify to their purposes. An example is provided at the end of this section under *Best Practices*.

3.30.2 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, FedEx, etc.). Districts are advised electronically solicitations do not qualify or meet the sealed requirements of construction solicitations (TGC 2269.059) due to the response package not being physically sealed.

3.30.3 Electronic Vendors List

For the purpose of obtaining bids or proposals on supplies, materials, equipment, and services, an electronic vendors list may be maintained by the purchasing office. This list must be open to any and 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 (e.g. not exceed two years). This should be from the time the infraction occurred and the vendor was notified in writing of removal from the list.

3.30.4 Responses to Electronic Solicitations

Per TLGC 271.0065, a vendor must be allowed the opportunity to respond to an electronic solicitation in for hard copy (e.g. paper). The purchasing office may want to consider locating 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 base on the following best practices:

- Allow for receipt of paper proposal packages so that no vendors are alienated from your bidding process.
- Also districts may want to create a vendor computer station within the purchasing department to allow vendors without internet access or computers to respond online.
- Below is an example of the wording which could be adopted to meet the requirements of TC 44.0313.
 - Both District users and vendors are required to access the system through a unique user account and password;
 - Individual user passwords shall be stored in a manner that cannot be accessed by any other user, and the District system administrator shall only have the ability 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 shall be encrypted using standard security technology;
 - The system shall limit inactivity by expiring a session based on a preset period of time;
 - All actions within the system can be audited for actions taken by any user;
 - All formal sealed solicitations shall 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 shall not allow for any late bids after the closing date and time;
 - The system shall only allow for bids to be electronically unsealed by authorized District staff; and
 - The system shall retain electronic copies of the vendors' responses for the minimum period of time required by the state of Texas records retention schedule or for an extended period time if required by the District.

3.31 Professional Services

References: Texas Education Code 44.031(f), Texas Government Code 791.011(h), 2254, and 2269, and Policies CH(LEGAL) and CV(LEGAL)

Though no formal definition of “professional services” exists in any of the statutes, TEC 44.031, TGC 2254 and 2269 identifies specific professions to be considered for the definition and term.

Below are the individual professions identified within the specific statute:

Texas Education Code 44.031(f)

- Certified Public Accounting
- Fiscal Agent
- Financial Consultant
- Attorney
- Technology Consultant

Texas Government Code 2254(2)(B)

- Licensed Real Estate Appraising
- Nursing
- Medicine
- Optometry
- Landscape Architecture
- Architect
- Engineer
- Land Surveyor

Texas Government Code 2269.057 and .058

- Architect
- Engineer
- Construction Material Engineering, Testing and Inspection Services

3.31.1 Request for Qualifications

The standard practice for soliciting professional services is a Request for Qualifications. The referenced statutes are limited as to how the process should be handled with very exceptions.

- Professional services are not be solicited on a competitive basis (e.g. price or fees).
- 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, 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.

3.31.2 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.

3.31.3 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 base 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

3.32 Emergency Damage or Destruction

References: Texas Education Code 44.031(h) and Policy CH(LEGAL)

TEC 44.031(h) allows for school districts to declare an emergency to make purchases through other methods other than those found in TEC 44.031 if the delay would prevent or substantially impair the conduct of classes or other essential school activities. These purchases include equipment, repair a school facility, or replace personal property which is destroyed or severely damaged as a result of an unforeseen (e.g. tornado) or foreseen (e.g. hurricane) catastrophe or emergency.

3.32.1 Types of Emergencies

Two types of emergency purchases are made in districts.

One type results from an eminent threat to the health, safety, or welfare of students. Such purchases must comply with state law and may be made only after a formal board action declaring an emergency and authorizing the purchase. An example of an emergency purchase of this type is the authorization to repair a school after a fire or a natural disaster. Emergency purchases exceeding the dollar amount triggering competitive procurement requirements shall be made in conformance with subsection (h) Section 44.031 Texas Education Code.

The second type of emergency purchase usually is defined by local policy to provide for the acquisition of goods or services to meet an immediate need such as purchases to repair damage to a facility which may imperil students or the security of the facility. Emergency purchases of this type fall below the dollar amount triggering competitive procurement requirements. For example, if windows are broken at a school by vandals, an immediate need exists to not only secure the building, but also to protect the contents from damage by the elements. This type of emergency purchase is normally utilized after regular business hours or on weekends and holidays. After purchases of this type are made, a purchase order should be issued after the fact on the next business day. Care should be taken that emergency purchases do not result from improper planning rather than from a true emergency.

It is important that the district attempts to eliminate emergency purchases for non-emergency situations as much as possible and requires that all emergency purchases be fully justified.

3.32.2 Delegation of Authority

The Board of Trustees should consider allowing for delegation of authority to declare an emergency by the district's Superintendent. See Section 3.6, *Board Authority*, for more information.

FASRG SECTION RULE

There are no rules for this section.

LOCAL POLICY SUGGESTIONS

See Section 3.6, *Board Authority*, for local policy suggestions.

BEST PRACTICE COMMENT

The school district should consider creating procedures base 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 during duress. A district should establish unit price contract(s) based on unit prices instead of time and materials in order 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.

3.33 Computers and Software

References: Texas Education Code 44.031(i), Texas Government Code 2054 and 2157, and Policy CH(LEGAL)

Based on 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 an Request for Proposal (44.031(a)(3)) or utilize a cooperative interlocal contract (44.031(a)(4)). Texas Education Code 44.031(i) also allows a school district to purchase technology equipment, services, and software, through the Department of Information Resources (DIR) awarded contracts. 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.

3.33.1 Technology Department's Involvement in the Purchase of Technology

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

3.33.2 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 consider a commodity, not a service. However, the development of a software application, where 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 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 the 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 breached.

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 base 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.

3.34 Automated External Defibrillators

References: Texas Education Code 44.047, Texas Health and Safety Code 779.001, and Policy CH(LEGAL)

A school that purchases or leases an automated external defibrillator, also known as an “AED”, is required to ensure that the AED meets the standards established by the federal Food and Drug Administration (FDA). The term AED is defined by the Health and Safety Code 779.001, which states an AED, as a heart monitor and defibrillator, that:

- Has received approval from the FDA of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;
- Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and
- On determining 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 (e.g. fire departments, emergency medical technicians, etc.) 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 base on the following best practices:

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

3.35 Single or Sole Source

References: Texas Education Code 44.031(j) and (k), and Policy CH(LEGAL)

A school district may choose to not follow the requirements of TEC 44.031 if it is determined by the district an item to be purchased 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 a particular item is covered by a patent or copyright is but one factor in determining if the purchase falls under the sole source exemption to the purchase requirements. As an 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 Texas Education Code purchasing law.

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

3.35.1 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 (e.g. 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/cmbli/>) or posting a request for competition through the *Electronic State Business Daily* (<http://www.txsmartbuy.com/sp>), both managed by the State of Texas Comptroller's office.

3.35.2 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 how may use and procured similar items.

3.35.3 Single Source and Federal Funds

For federal purchases, OMB 2 CFR 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 base on the following best practices:

- Consider following the purchasing methods available through TEC 44.031 to ensure 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 in order to show the district followed sufficient due diligence to verify a vendor's sole source claims.
- Services are not considered sole source

3.36 Insurance

References: Texas Education Code 44.031, Attorney General Opinions DM-347 (1995) and DM-418 (1996), and Policy CH(LEGAL)

Insurance comes in many forms, from general liability, student insurance, health benefits, etc. The establishment of insurance contracts is be made accordance with Education Code 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.

3.37 Background Checks for Criminal History

References: Texas Education Code Section 22.0834, Texas Administrative Code 46.3 and 46.4, and Policies CH(LEGAL) and CJA(LEGAL)

Texas law and district policies are concerned with the relationship of a school district with individuals and contractors, ensuring the individuals or employees of contractors performing services for the district can be allowed to have access to the district as a whole, and if the students to whom the district is entrusted are kept safe. These requirements are in place to remove the chance the district unknowingly succumbs to illegal practices of a former convicted criminal and protect students from potential predators.

3.37.1 Background Checks - Definitions

To better understand the terms used in statute and policy related to background checks, review 19 TAC Chapter 153, Subsection 153.1101, specifically 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 not only covers contractors, but also district staff (certified and non-certified). The reader should be aware not all terms included in the statute, policies or rules are applicable.

3.37.2 Contractor Employee Eligibility

This section of the Texas Education Code was created to establish certain guidelines on how school districts ensure that the individuals that 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 Department of Public Safety provides information on individuals to increase efficiency and reduce the costs associated with background checks in a timely manner.

At extensions, the purchasing office should require the contractor to recertify in writing they have and will continue to test their staff base assigned to the district against the clearinghouse the eligibility of their staff to participate in the services provided to the district.

3.37.3 National Criminal History Check

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

3.37.4 Contractor Requirements to Secure Criminal History Information on Employees

TEC Subsections 22.0834(c) through (e) require that a company that will be performing a contract with a school district must send to the Texas Department of Public Safety the required information for obtaining national criminal history record information, which, if made a requirement of the contract, may include fingerprints and photographs.

The company must certify to the district that they have met this requirement and has 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 perform or ensure subcontractors have done background checks.

TEC Subsections 22.0834(g) through (j) requires that an entity that contracts with a district obtain and certify that it has received all criminal history record information for their employees that will have continuing duties under the contract and be in direct contact with students.

Subsection (j) states that the Texas Education Agency ("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 ensure the documentation received are kept confidential due to nature of the data presented in the reports.

3.37.5 Fingerprinting of Contractor Employees

TEC Subsection 22.0834(f) allows for a district to declare an emergency and may give permission to a contractor's employee to have access to a district facility if escorted by district staff.

3.37.6 Emergencies

TEC Subsection 22.0834(f) allows for a district to declare an emergency and may give permission to an individual to perform the contracted services only if they are accompanied by a district employee. Note that no definition is given in this section, so TEC Subsection 44.031(h) might be considered the basis. The subsection also provides the ability for a district to adopt rules (policies) regarding the use of the section.

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 base on the following best practices:

- The purchasing office should create a provision to be included with a solicitation to have the respondent to affirm 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 perform or ensure subcontractors have done background checks.
- The purchasing office should establish a procedure to require the contractor recertify in writing they have and will continue to test their staff base assigned to the district against the clearing-house the eligibility of their staff to participate in the services provided to the district.
- If a school district chooses to develop and maintain ownership of the background checks process, the district should develop procedures ensure the documentation received are kept confidential due to nature of the data presented in the reports.

3.38 Felony Conviction Notice

References: Texas Education Code Section 44.034, and Policy CH(LEGAL)

An individual or business must give advance notice if a 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.

Note that 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 to have 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 for 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 base on the following best practices:

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

3.39 Change Orders

References: Texas Education Code 44.0411 and Policy CH(LEGAL)

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

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

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

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.

3.40 Energy or Water Conservation Measures (CH)

References: Texas Education Code 44.901 and .092, Texas Government Code 2254, and Policy CH(LEGAL) and CL(LEGAL)

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

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

See policy CL for legal requirements pertaining to such contracts and plans.

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

- The board may enter into energy savings performance contracts only with persons who are experienced in the design implementation, and installation of the energy or water conservation measures addressed by the contract.
- The board shall 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.

3.41 Recycled Products (CH)

References: Texas Health and Safety Code 361.426 and Policy CH(LEGAL)

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

- Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.
- Encourage the use of products made of recycled materials.
- 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 demonstrates to the Water Commission that compliance would work a hardship on the district.

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.

3.42 Agricultural Products

References: Texas Education Code 44.042 and Policy CH(LEGAL)

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

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

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

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.

3.43 Federal Requirements

References: Policy CBB(LEGAL), Office of Management and Budget (OMB) 2 CFR Part 200;

The Department of Education (DOE) adopts the Office of Management and Budget (OMB) Guidance in 2 C.F.R. Part 200 Uniform Guidance (except for 2 C.F.R. 200.102(a) and 2 C.F.R. 200.207(a)). The Uniform Guidance establishes uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, including school districts. As a result 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 USDE's EDGAR website.

The Texas Education Agency (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) and is available online at TEA's EDGAR website.

The requirements for EDGAR are changed periodically. The 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.

3.44 Bus Purchase or Lease

References: Texas Education Code 44.031(l), Texas Transportation Code Chapter 547 and Policy CH(LEGAL) and CNB(LEGAL)

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

Texas Transportation Code 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.

3.45 Right to Work

References: Texas Education Code 44.043 and Policy CH(LEGAL)

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
- Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

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.

3.46 Lobbying Restriction: Tobacco Education Grant Funds (CH)

References: Texas Government Code 403.1067, 31 U.S.C 1352 Byrd Anti-Lobbying Amendment, CFR 17.24 - Certification Regarding Lobbying and Policy CH(LEGAL)

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 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 item 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.

3.46.1 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, 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 U.S.C. 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.

3.46.2 Certification Regarding Lobbying

Applicable to grants, subgrants, cooperative agreements, and contracts exceeding \$100,000 in Federal Funds. CEs must submit a certification regarding lobbying as a prerequisite for making or entering into a transaction which 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.

3.47 Protests Procedures and Dispute Resolutions

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.

3.47.1 Protests

A protest is when a vendor may believe they have been aggrieved by the outcome of an award. A protest policy and/or procedure will allow them to follow a formal process for such a grievance, and they 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 they were aggrieved, they 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 they have a strong process in place for their procurements.

To allow for this to happen, a school district should have at a minimum a procedure level process to provide guidance to both the vendor and the district on how to proceed. Below are examples of areas to consider in establishing the process they are to follow.

- All protests at all levels are to be in writing only, not verbal.
- The school district should identify the varying levels of protests which should include 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 (ex. five district business days after public notice of award has been published).
- The timeframe for a written response to the vendor by the school district on the outcome of the investigation based on the grievance level (ex. ten district business days after a timely protest has been submitted).
- The next steps the vendor can consider if the outcome to their protest is not in their favor.

Best Practice for Protests

Once it has been identified by the purchasing office a vendor is considering a protest, the office should immediately provide the vendor with the formal procedures for doing so. It is advised the lead purchasing official for the district should ask the vendor to discuss the process first before the protest is submitted. Many times protests may be avoided by communicating with the vendor first to ensure they understand what transpired with the award. If the vendor still feels they were aggrieved, they should submit the protest. Note 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 further with the procurement unless a lead official of the school district makes a determination that the award is necessary to protect the substantial interest of the district or that the protest would not affect the outcome of the award.

For the Level III protest, the policy or procedure should state 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 under the Texas Administrative Code §250.3, *Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues* for the Texas Education Agency. Note this protest is for TEA's procurements, not a school district, and should be modified to reflect the difference.

3.47.2 Disputes

Disputes can be wide ranging, 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 their final determination on the district's position on the dispute.

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

All disputes should be handled in some form of written communication. Verbal communications many times are not easily clarified or agreed upon by all parties. When the school district is communicating a stance, the district should always ask the vendor to respond in kind with their understanding of the district's position. This will allow for complete communications between the parties.

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 a formal protest procedure either in the district's *CHE(LOCAL)* policy (recommended) or in 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 dispute resolution within the school district's standard terms and conditions (e.g. boilerplate) on how disputes of awarded contracts are to be handled.

3.48 Confidentiality of Documents

References: Texas Government Code Chapter 552, Policy GB(LEGAL), and 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 Public Information Act (TPIA), Texas Government Code, Chapter 552.

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

3.48.1 Legal Requirements by Procurement Method

Certain types of solicitation methods requires bid responses to be read out loud the names of the respondents, fees and/or pricing, at the time of bid opening. A district must adhere to this requirements and follow the law and policy. These include:

- Non-construction
 - Competitive Sealed Proposals (Texas Education Code Section 44.0352(c))
- Construction
 - Competitive Bidding Method (Texas Government Code Section 2269.104)
 - Competitive Sealed Proposal Method (Texas Government Code Section 2269.154)
 - Construction Manager-at-Risk Method (Texas Government Code Section 2269.253)

3.48.2 Pre-award

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

3.48.3 Post-award

A method for vendors to determine how they did in a particular procurement is for the district to publish an award tabulation providing enough information as to assist the vendor in knowing how competitive they were in a specific procurement. This tabulation should be provided in a non-editable format (e.g. portable document format or "pdf"). The district should determine prior to release what information is relevant to the vendors.

3.48.4 Confidentiality

Some documentation may be considered confidential as identified by the respondent and shall not be release without permission from the respondent or by order of the Texas Office of the Attorney General (OAG). Communication with your legal counsel may be necessary to ensure confidential information is not release without proper considerations.

NOTE: Due to the ruling of Boeing v. Paxton (2015), disclosure of pricing through the TPIA 552.104 must allow the affected third-parties an opportunity to submit arguments to withhold their information during such requests. Communication with your 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 base on the following best practices:

- The district purchasing office should establish a standard of what information will be publicly provided (e.g. tabulations on the district website) and be consistent in the standard.

3.49 Records Management

References: Texas Government Code 441, Policy CPC(LEGAL), Texas State Library and Archives Commission Record Retention Schedules

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

3.49.1 Records Management Function

This records management function should support the school district's overall information management plan described in the Data Collection and Reporting module and generally provide for:

- Both 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. Alternatively, it may use hard copy or a combination of methods. Each school district should select the methods best suited to its needs.

3.49.2 Record Retention

The purchasing office should not rely upon the Record Management Officer (RMO) for their 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.

3.49.3 Purchasing "Due Diligence" Documentation

As part of the purchasing function, a number of documents support district procurement decisions, from quotes for smaller purchases to the documents necessary for a 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 if needed. It is advisable these documents be attached to a copy of a purchase requisition or order if applicable. These documents should be retained per the current records retention schedule.

For formal procurements, specifically those solicited under Texas Education Code 44.031 or Texas Government Code 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:

- Final solicitation document(s) as published;
- Comprehensive vendor mailing / notification list;
- All responses to the solicitation;
- The tabulation with the criteria, scores and complete results; and
- 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 (e.g. bid number). Though not required by the records retention schedule, it is advisable the district purchasing office maintain all other supporting documentation (e.g. solicitation drafts, email notifications, etc.) 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 base 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.
- Establish guidelines on which solicitation documents 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 (e.g. bid number).
- Though not required by the records retention schedule, it is advisable the district purchasing office maintain all other supporting documentation (e.g. solicitation drafts, email notifications, etc.) with the bid file.

3.50 Purchasing Card (“P-card”) Programs – Purchasing Process

References: None

Purchasing cards can provide efficiency, transparency and security when utilized correctly. A purchasing 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 labor-intensive purchase order processes, and employees can focus on doing the job at hand rather than the paperwork (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 their compliance requirements.

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

3.50.1 Purchasing Office Role in a Purchasing Card Program

Unless otherwise directed by district administration, the main role for the purchasing office to perform in a purchasing card program is ensuring purchases made by a cardholder meets the established guidelines of a school district purchase. On a periodic basis and no less than annually, the purchasing office should review spend reports for the period looking for trends in purchasing behaviors. If the purchase office notices a trend towards a category of goods or services which 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 purchasing cards, ensuring only those who should have cards do. This responsibility may also include establishing the card limits, be it by transaction or by period, for each of the cardholders based on their responsibilities and spend allowances.

3.50.2 Purchasing Card Program Controls

In order to avoid fraud and waste, purchasing cards must be controlled closely. Do not expect to free-up 100% of the time spent processing purchase orders due to implementation of a p-card system. A district establishing a new purchasing card program should ensure enough controls are in place 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.

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 are including the use of the card as a factor in performance appraisals and employing a 3-strikes-you’re-out feature, where an employee who misused the card or couldn’t 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, although spending limits may vary.

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 purchasing card program.

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 line-by-line detail of the order.
- Cardholders must complete training prior to receiving a card and acknowledge in writing receipt of the policy and procedure manual.

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 4 to 10 cardholders at most in order to be effective.

Monitoring and Oversight

- Be selective when issuing cards--focus on repetitive, small-dollar purchases.
- 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.
- 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 and 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.
- Review reports provided by the p-card programs such as declined authorizations report, disputes report, and lost/stolen card report which 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 in order to obtain best prices for the district.
- Encourage staff to contact the hotline used to report any fraud.

3.50.3 Purchasing 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 purchasing card program. Procedures should be through and

cover as many potential areas of use to provide thorough 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 losses their purchasing card or finds fraudulent purchases
- What types of items or services are considered acceptable or unacceptable use of the purchasing card
- Non-compliant violations for misuse of a purchasing card and the consequences for misuse of a purchasing card
- How to request a new or replacement purchasing card
- Purchasing card transaction deadline calendar so the cardholder understands the sign-off requirements

Many districts have established and successful purchasing card programs. If a district is investigating the possibility of a new purchasing card program, it is recommended other districts be contacted for their program guidelines. Many are now available online for quick access and review.

3.50.4 Purchasing Card Program Rebates

Many purchasing card programs include rebates for purchases made using purchasing cards. These rebate programs can provide benefit to the district. The district should establish through the finance department how rebates will be handled once received. Note 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:

- Consider establishing in CH(LOCAL) basic guidelines and department responsibilities for a purchasing card program. Be careful to limit procedural actions in policy unless utilizing exhibits for the purchasing card manual once it has been shown to be static and meets the program's intent.

BEST PRACTICE COMMENT

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

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

3.51 Authority to Contract / Contract Agreement Procedures and Signature Authority

References: CH(LEGAL)

CH(LEGAL) allows 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 now have the ability to 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.

3.51.1 Areas to Consider for Signatory Authority

The follow areas are common within a school district and should be identified by the district administration on 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:

- Allow for contracting authority to be delegated to the superintendent and designees through CH(LOCAL)

BEST PRACTICE COMMENT

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

- If CH(LOCAL) includes a provision for the superintendent and designees to establish contracts on behalf of the board, signature authority should be establish, 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.

3.52 Requisition Processing

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. It is a request generated manually (paper) or electronically (through use of automated systems) for the purchase of supplies, services, equipment, etc.

3.52.1 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 which require expenditures from a special revenue fund should be approved by the program administrator.

3.52.2 Requisition Format

Requisitions should, at a minimum, 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, once properly approved, may become a numbered purchase order.

3.52.3 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. At this time, the requisition should be reviewed for the following:

- Accuracy
- Availability of funds
- Adequate description
- Proper account coding
- Overall completeness
- Proper signatures

Either by an automated system with workflow or by paper copy, 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.

3.52.4 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 base on the following best practices:

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

3.53 Purchase Orders

References: None

Purchase orders are among the most commonly utilized method for procuring goods and services. As its name indicates, this document serves as a formal order for goods, materials, and/or services from a vendor. A purchase order, once approved, 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.

3.53.1 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 which may include a(n):

- Vendor Copy which is sent to the selected vendor
- Accounting Copy which is sent to the district's business office and used for encumbering funds from the proper account
- Receiving Copy which is sent to the accounting department when the order is received confirming that payment should be made according the district's accounts payable process
- User or File Copy which 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 shall be cancelable if merchandise is not received within 60 days. Depending on certain factors relating to the purchase, flexible cancellation dates may be more appropriate (i.e., proximity of vendor, availability of merchandise, quantity ordered, etc.).

3.53.2 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.

3.53.3 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 period, the district may purchase certain specified items from the vendor not exceeding the total dollar limit without issuing additional purchasing orders. 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.

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

- 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 observed.

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.

3.54 Receiving and Distributing Purchases

References: None

Carefully checking deliveries and making sure that those needing the delivered goods and services actually get them as ordered is part of the purchasing process. Centralized receiving, which is recommended, and decentralized receiving departments and campuses are both used; however, their missions are the same.

3.54.1 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 (i.e., food service, maintenance, instructional supplies, athletic supplies, etc.) 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, however, it may be in the best interest of the district for the vendor to deliver items directly to a campus or department (known as “drop shipped”). The district should, therefore, establish and adhere to procedures for handling alternative delivery locations, ensuring that proper approvals are obtained for items which 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 at the various campuses or departments are receiving goods. 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.

3.54.2 Receiving Report

For district with no electronic means such as an electronic finance system to track receiving of orders, 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 (i.e., a receiving copy) or a separate report. Upon receipt of merchandise ordered, receiving personnel compare items received to the purchase order.

Districts which 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.

3.54.3 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 who 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.

3.54.4 Distribution

Distribution procedures should be in place for goods received at central locations. Receiving personnel may contact the ordering campus or department to inform them that goods have been received. Personnel should then distribute goods according to the specifications to the proper location and/or staff members. 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 base 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 assure the quality of merchandise received, and establishes the authorities, responsibilities, techniques, and standards related to the inspection and testing of merchandise received.

3.55 Junior College Purchases

References: Texas Education Code 44.0311

TEC Subsection 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 TEC Section 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.

3.56 Child Nutrition Programs

References: National School Lunch Program (NSLP) Handbook Administrator's Administrative 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 United States Department of Agriculture (USDA) and the Texas Department of Agriculture (TDA). Purchasing guidelines are established through TDA's Administrator's Reference Manual (ARM) Section 17, Procurement. Program information can be found on the TDA website at www.squaremeals.org.

The purchasing office should fully understand the differences of the requirements in ARM 17 due to the more stringent purchases. All school district administrative personnel with child nutrition procurement responsibilities (child nutrition directors, managers, purchasing staff, etc.) should be familiar with ARM 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 base on the following best practices:

- Attending procurement training sessions focused on the TDA ARM 17 Procurement module.

3.57 Petty Cash

References: None

A petty cash fund is used to reimburse employees for small expenditures for 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- \$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 that 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.

3.58 Bank Depository

References: Texas Education Code Subsections 45.201 to 45.208, Texas Administrative Code 19 TAC 109, and Policy BDAE(LEGAL)

The establishment of a school district's depository contract is to follow the requirements set forth in the TEC Chapter 45 and the TAC Rule 19 TAC 109. The process for soliciting and award the contract is different than other procurements which follow other Texas Education Codes.

The purchasing office should become familiar with the procurement process several months in advance of the expiration of the current contract due to the requirement that not later than the 60th day before the date a school district's current depository contract expires, the district must choose whether to select a depository through competitive bidding or through requests for proposals.

The solicitation document is to be the current version provided by the Texas Education Agency. 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.

3.59 Real Property

References: Texas Education Code Sections 11.154 and 46.011, Texas Local Government Code Chapter 272, Texas Natural Resources Code Section 71.005, and Policy CDB(LEGAL)

Numerous statutes provides 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.

3.60 Purchase of Instructional Materials (IMA)

References: Texas Education Code Chapter 31, Texas Education Code Section 44.031, Texas Administrative Code 19 TAC Chapter 66, and Policies EFA(LEGAL), CMD(LEGAL) and CH(LEGAL)

The Instructional Material Allotment (IMA) is managed the Texas Education Agency. School districts receive an allotment to purchase instructional materials (e.g. textbooks), technological equipment (e.g. computers) and technology-related services (e.g. software) to be used in the classroom.

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

3.60.1 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.

State Board of Education (SBOE) Proclamation Lists

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

Cooperatives

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

Other Materials not available through Proclamation or a Cooperative

If the selected materials are not available through a Proclamation or a cooperative, the purchase should follow the requirements of 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 base on the following best practices:

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

